TRANSCRIPT OF RECORD

(7)

Supreme Court of the United States

OCTOBER TERM, 1954

No. 97

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, ET AL., PETITIONERS,

vs.

ANHEUSER-BUSCH, INC.

WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

PETITION FOR CERTIORARI FILED MAY 26, 1954

CERTIORARI GRANTED OCTOBER 14, 1954

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State of Missouri, } ss.
City of St. Louis. }

IN THE

Circuit Court, City of St. Louis, State of Missouri.

ANHEUSER-BUSCH, INC., a Corporation,

Plaintiff,

vs.

LLOYD WEBER, RUSSELL L. DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REEB, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the International Association of Machinists, District No. 9,

Defendants.

No. 54704-D.

TRANSCRIPT OF THE RECORD.

THE PLEADINGS.

This cause was instituted by the filing of a petition for injunction on April 19, 1952, in which Anheuser-Busch, Inc., was plaintiff, and Lloyd Weber, Russell L. Davis, Walter Patrick, Thomas Blake, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer, and Thomas Mulvaney, individually and as representatives of the International Association of Machinists, District No. 9, were defendants.

On April 30, 1952, said petition was amended by insertion and interlineation and is, in words and figures, as follows, to-wit (caption and signatures of counsel omitted):

PETITION FOR INJUNCTION.

Comes now the plaintiff and for its cause of action states:

1. Plaintiff is and at all times hereinafter mentioned was a corporation duly organized and existing under the laws of the State of Missouri with its principal place of business at 721 Pestalozzi Street, St. Louis, Missouri. Plaintiff is engaged in the business of manufacturing and selling beer, yeast, corn products and other commodities. In connection with the operation of its business, plaintiff purchases from others large quantities of raw materials and supplies which are delivered by common carriers and private carriers and otherwise, to its plants, including its main plant located at and adjacent to its said principal place of business. In distributing its manufactured products to its customers plaintiff makes shipment by common carriers, private carriers, its own trucks and otherwise. Also in effecting distribution of beer manufactured by it, plaintiff warehouses said product in package form in public warehouses, independently owned and operated, situated in the City of St. Louis, Missouri, and elsewhere. Also in effecting distribution of beer manufactured by it, plaintiff sells product to dealers or wholesalers whose principal places of business are situated in areas other than St. Louis, Missouri. Deliveries pursuant to such sales are made from its main plant and said public warehouses hereinabove referred to by common carriers, private carriers and to said dealers or wholesalers directly. Plaintiff employs at its main plant approximately 6,000 persons.

2. Defendant Lloyd Weber is the business representative and Defendant Russell L. Davis is the Business Agent, of

the International Association of Machinists, District No. 9. Defendants, Walter Patrick, Thomas Blake, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer and Thomas Mulvaney, are members of the negotiating committee of said District No. 9. Membership in said unincorporated labor organization is so numerous that it is impractical to name all members thereof as defendants herein. The defendants named, however, are sufficient to assure adequate representation of the entire class of persons who are members of and known as the International Association of Machinists, District No. 9, hereinafter at times referred to as the "Machinists". A common question of law and fact exists with respect to the named defendants and the class represented by them known as District No. 9, which question arises out of the protection of the rights of plaintiff concerning which relief is herein sought.

3. For a number of years there has existed in the St. Louis area an unresolved jurisdictional dispute between the Millwrights, affiliated with the Building & Construction Trades Council, and the Machinists, who are not members of the Building & Construction Trades Council. This dispute is manifested by recurring demands made on general construction contractors by the Millwrights and by the Machinists that the disputed work be given exclusively to members of their respective organizations, and by picketing of jobs by the labor organization whose members were not given the work. The result of such picketing is that trades allied with the Building & Construction Trades Council refuse to cross a picket line established by the Council and certain other trades refuse to cross a picket line of the Machinists.

4. Plaintiff has in its employ building trades workers whose unions are members of the Building & Construction Trades Council and has collective bargaining agreements with such unions covering these employees.

5. The plaintiff has for several years recognized the said District 9, Machinists, as bargaining agent for a certain group of its employees. Plaintiff has negotiated with said Machinists several collective bargaining agreements covering such employees. The last such collective bargaining agreement expired December 31, 1951. Article VII of said collective bargaining agreement read as follows:

Article VII.

Section 1: Jurisdiction: The Employer agrees that all turning, boring, fitting, filing, planing, shaping, babbitting, chipping, sawing, and machinery repairing on gasoline, diesel and electric trucks and automobiles in the plant and the making, assembling, erecting and repairing of all machinery of all descriptions and parts thereof performed within the employer's plant by the employer shall be performed by employees within the bargaining unit as set forth in Section 1 of Article 1 of this agreement, either under its own supervision or such other supervision as the employer shall select.

Section 2: In the event it becomes necessary to have such work hereinbefore described contracted out, the Employer shall let out such work to and select contractors who have with the International Association of Machinists collective bargaining agreements which contain provisions corresponding to or consistent with the aforesaid jurisdictional limitations.

The said Machinists, through words and conduct, have indicated that they intend, by Section 2 of Article VII above quoted, to require plaintiff to insert in any and all contracts with outside organizations for construction and reconstruction work on its premises, a provision that the work of installing, erecting and moving machinery—the items which are the subject of the jurisdictional dispute between the Machinists and the Millwrights—shall be per-

formed exclusively by the Machinists, and to refuse to deal with any general contractor who will not consent to the insertion of such a provision in his contract. The Machinists, further, through words and conduct, have indicated that they will insist that like action be taken by the other breweries in the St. Louis area, all for the purpose of compelling general contractors to require the use of Machinists in installing, erecting and moving machinery, at the peril of receiving no business from the breweries if they fail to accede to the Machinists' demand. Plaintiff states that if it accedes to the demands of the Machinists and inserts the clause in its contract with the Machinists, its plant will be picketed by the Millwrights, and Teamsters and Bottlers Union will refuse to cross the picket line.

6. Negotiations between the plaintiff and the Machinists for a new 1952 contract began on December 19, 1951. Said negotiations included the proposal by the Machinists of certain new clauses and the request by the Company for the elimination of Section 2 of said Article VII. The Machinists indicated their unwillingness to permit such change of the contract and requested the appointment of a Federal Conciliator to assist in subsequent negotiations between the parties. From the period, January 9, 1952, to March 31, 1952, a number of meetings were held. During said meetings, and, in particular, at the conclusion of the last meeting of March 31, 1952, the Machinists indicated that they would never consent to a change in or elimination of said Article VII, Section 2, or any modification which did not require plaintiff in contracting out work in the nature described in said Section 1, to use only contractors which had contracts with the Machinists. The Machinists stated at said last meeting that their position in this respect would remain unaltered and that they would go out on strike and set up a picket line which would be continued until the plaintiff agreed to the inclu-

sion of the provision in the forthcoming contract requiring plaintiff, in contracting out work of the nature described in said Section 1, to use only contractors which had contracts with the Machinists.

7. On April 7, 1952, the Machinists did, in fact, go on strike and placed a picket line around the premises of the plaintiff. Said Machinists have so remained on strike and have maintained said picket line to the time of the filing of this petition. Organized employees of the plaintiff, with the exception of certain of the maintenance men, to the number of about 250, refused to cross this picket line, from April 7, 1952, to and including April 17, 1952, with the result that plaintiff was unable to obtain a sufficient production work force to maintain its operations and was forced to close down.

8. Plaintiff further states that since the Machinists' strike at plaintiff's plant, Griesedieck Western Brewery Company, operators of plants in Belleville, Illinois, and St. Louis, Missouri, signed a contract with the Machinists covering its Belleville plant containing the clause demanded by the Machinists, and thereupon its St. Louis plant was picketed by the Building Trades and the operation of said brewery was thus and thereby impaired.

9. The strike of said Machinists and the picket line being maintained by them are for the purpose of compelling the plaintiff to agree not to deal with contractors, doing the work described in said Section 1, until such contractors have accepted the Machinists' bargaining agent for their employees, and, therefore, constitutes, as to plaintiff, a secondary boycott and is in violation of Section 8 (b) (4) (A) and (B) of the National Labor Relations Act, as amended, and Section 303 (a) (1) and (2) of the Labor Management Relations Act 1947, and it is an attempt by the Machinists, using coercion on plaintiff, to illegally establish the Machinists as the bargaining representative for other employees of other employers for whom

the said Machinists have not been certified as bargaining representatives by the National Labor Relations Board; and also an attempt to coerce other employers beyond the control of the plaintiff to award such work to said Machinists and to unlawfully extend the bargaining rights of said Machinists.

10. Said strike of the Machinists and said picket line are for the parpose of requiring contractors, doing the work described in said Section 1 for the plaintiff, to assign such work to the Machinists and, therefore, constitutes a jurisdictional dispute and is in violation of Section 8 (b) (4) (D) of the National Labor Relations Act, as amended, and Section 303 (a) (4) of the Labor Management Relations Act 1947.

11. Plaintiff further states that in the proper conduct of its business it has in the past and will in the future be required to improve and expand its plant and structures by adding new buildings thereto and by the reconstruction and remodeling of existing structures, all of which work is vitally necessary to the continuing operation of its business; and that the jurisdictional dispute between said Machinists and the said Millwrights hereinbefore referred to will continue to exist in the event plaintiff is required to reinsert said paragraph 2 into another contract with said Machinists, and it will thereby cause the plaintiff to entail further work-stoppages and irreparable losses as aforesaid.

12. Commencing on March 31, 1952, as aforesaid, and continuing to the date hereof, defendants and the members of the class represented by them did individually conspire, connive and unlawfully agree among themselves for the purpose of continuing the said unlawful strike and picket line, and did cause persons to picket various entries of the plaintiff's main plant. By virtue of the presence of said pickets, employees of plaintiff represented by other labor organizations than that herein concerned have on

occasions refused to report for work and employees of third parties organized by other labor organizations have refused and are continuing to refuse to bring materials in or to take materials out of plaintiff's plant.

13. Commencing on March 31, 1952, as aforesaid, and continuing to the date hereof, defendants and the members of the class represented by them did individually conspire, connive and unlawfully agree among themselves to conduct said unlawful strike and to maintain said unlawful picket lines at plaintiff's brewery and the various supply warehouses leased by plaintiff, and at the same time to refrain from picketing the breweries of plaintiff's competitors similarly situated, thereby causing loss of customers and business, and loss of valuable competitive position difficult to regain, and thereby to coerce plaintiff's capitulation.

14. Commencing on the morning of April 18, 1952, pickets, acting in concert and on behalf of said Machinists, interfered with and effectively obstructed the delivery of coal and other commodities to and from the premises of plaintiff, and by unlawfully picketing did cause employees of the Manufacturers Railway Company and the Keightley Brothers Coal and Coke Co. to refuse to move or deliver products vitally necessary to the operation of plaintiff's business, and said Railway Company and said Coal Company did thereby refuse to deal with plaintiff.

15. Said conduct and activity referred to in said Paragraph 14 constitutes a secondary boycott under the common law of the State of Missouri, and, in addition, is in violation of Section 8 (b) (4) (A) of the National Labor Relations Act, as amended, and Section 303 (a) (1) of the Labor Management Relations Act, 1947.

15a. That said conduct and the activities of the defendants, mentioned herein, are and were in furtherance of an unlawful conspiracy, agreement, combination, confederation, or understanding between themselves in restraint of trade, or competition, in the importation, transporta-

tion, manufacture, purchase or sale of products and commodities in this State, and of articles bought and sold in connection therewith, and the defendants individually, and as a class, are guilty of a conspiracy in restraint of trade, and are guilty of a conspiracy in restraint of trade in violation of the Laws of the State of Missouri, and particularly in violation of Section 416.010, R. S. Mo. 1949, and said defendants, individually, and as a class, have unlawfully conspired, as aforesaid, for the purpose of compelling plaintiff to agree not to deal with independent construction contractors unless and until said contractors have accepted defendants as bargaining agent for their employees; and that the picketing by defendants is carried on pursuant to, and as, one of the illegal, coercive acts of such conspiracy; having as one of its purposes an illegal restraint of trade, as aforesaid, for the purpose of compelling plaintiff to become a party to an agreement, which is in violation of the common law of the State of Missouri, and which has, as its purpose, an illegal restraint of trade under the Missouri Conspiracy Statutes; and that plaintiff, by acceding to defendants' demands, will be acting in conspiracy and concert with defendants in violation of said laws of Missouri, thereby subjecting plaintiff to legal liability under such laws.

16. Plaintiff further states that in the conduct of its business it is necessary at all times to have yeasts, corn products and beer in various stages of processing, and that such processing once started must be continued to completion. By reason of the illegal strike and picketing aforesaid, plaintiff has been prevented from completing its normal manufacturing processes heretofore begun, and is suffering irreparable damage through the progressive spoilage of the partly processed food products.

17. Each of said unlawful and illegal acts referred to in said paragraphs 7, 9, 10, 12, 13, 14, 15, 15a and 16 has injured the plaintiff in that it is unable to operate its

manufacturing facilities and to distribute and merchandise its manufactured products.

18. Plaintiff is without adequate remedy at law and is suffering and will continue to suffer irreparable damage by the acts and course of conduct of the defendants as aforesaid and those they represent and others who have unlawfully agreed, combined, conspired and confederated with them. Suits at law, if brought, will be numerous, and owing to delay and lack of financial responsibility on the part of defendants would not result in plaintiff's obtaining any substantial relief.

19. The exigencies of the situation make it impossible for notice to be given to defendants of an application for a restraining order of the nature prayed for herein, because the acts sought to be restrained are continuing, and the delays incident to a notice and hearing would increase the damage and injury to plaintiff.

Wherefore, the premises considered, plaintiff prays that this Court by its injunction and injunctive order herein permanently enjoin defendants and each of them, in their individual and representative capacity, members of the class represented by them, together with all other persons acting in their behalf and at their behest and in concert with them from:

(a) Conspiring, conniving and unlawfully agreeing to participate in and continue the illegal strike and picketing hereinabove described.

(b) In concert and as a class effecting and participating in and continuing the illegal strike and picketing hereinabove described.

(c) Picketing or otherwise interfering with or restricting passage on or over the various streets and roadways, and the railroad tracks, so as to affect or interfere with, or otherwise affecting or interfering with, the delivery of materials, goods and products to and from plaintiff's premises.

(d) Picketing, setting up a picket line or lines, or maintaining a picket line or lines, on or about any of the premises of plaintiff, or any premises where plaintiff stores or warehouses beer or other products, or does business in connection therewith.

And that during the interim pending final determination of this cause, this Court issue a temporary injunction to the same effect; and pending the issuance of said temporary injunction plaintiff be granted a restraining order of this Court issued to the same effect; and for such further and additional relief as to this Court may seem just and proper under all the circumstances of the case.

And on the same day, to-wit, April 30, 1952, defendants filed their petition for removal of this cause to the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, said petition was allowed and on June 10, 1952 said cause was remanded to the Circuit Court.

On June 10, 1952, defendants filed their separate motion to dismiss for want of jurisdiction and failure to state a cause of action, their return to the order to show cause, and their separate answer, in words and figures, as follows, to-wit (caption and signature of counsel omitted):

SEPARATE MOTION OF DEFENDANTS TO DISMISS FOR WANT OF JURISDICTION AND FAILURE TO STATE A CAUSE OF ACTION, SEPARATE RETURN TO THE ORDER TO SHOW CAUSE AND SEPARATE ANSWER OF DEFENDANTS.

Separate Motion of Defendants to Dismiss for Want of Jurisdiction and Failure to State a Cause of Action.

Come now the defendants herein and respectfully move this Court to dismiss plaintiff's petition and for reasons therefor state:

1. Plaintiff's petition shows on its face that plaintiff seeks the injunctive process and relief of this Court by reason of the alleged violation by these defendants of certain provisions and sections of the National Labor Relations Act—hereinafter referred to as the N. L. R. A., to-wit:

> Section 8 (b) 4 A & B, as amended, and Section 303 (a) 1 and 2 of the Labor-Management Relations Act of 1947, hereinafter referred to as the L. M. R. A. —all as set forth in paragraph 9 of said petition.
>
> Section 8 (b) 4 D of the N. L. R. A., and, Section 303 (a) 4 of the L. M. R. A., of 1947—all as set forth in paragraph 10 of said petition.
>
> Section 8 (b) 4 A of the N. L. R. A., and Section 303 (a) 1 of the L. M. R. A., of 1947—all as set forth in paragraph 15 of said petition.

2. That exclusive jurisdiction to hear and determine the matters and things as hereinbefore set out has been pre-empted by the National Labor Relations Board under and by virtue of Section 10 (a) of the N. L. R. A., and that specific remedy is provided for by Section 10 (k) and (1) of said Act; that remedy for violation of Section 303 (a) of the L. M. R. A., is provided for in Section 303 (b) of the said Act and none other.

3. That by reason of the foregoing this Court is wholly and totally lacking in jurisdiction to hear and determine any and all matters as set forth in plaintiff's petition.

4. That plaintiff has failed to state a cause of action in law or in equity under the statutes or the common law of the State of Missouri, and therefore is not entitled to any relief by this Court.

Wherefore, the premises considered, these defendants pray that plaintiff's petition be dismissed.

Return to Order to Show Cause and Answer of Defendants.

Come now the defendants and for their return to the order to show cause heretofore issued by this Court on April 21, 1952, and for answer to plaintiff's petition state:

1. That this Court has no jurisdiction to hear and determine any of the matters or things set out in plaintiff's petition and that plaintiff's petition be dismissed.

2. That plaintiff's petition fails to state facts sufficient to state a cause of action or entitle it to any relief in law or in equity.

3. Defendants admit the allegations of paragraph 1 of plaintiff's petition.

4. Defendants admit the allegations of paragraph 2 of said petition, except the last sentence thereof which defendants deny.

5. Defendants deny the allegations of paragraph 3 of plaintiff's petition.

6. Defendants are without information or knowledge to admit or deny the allegations of paragraph 4 of plaintiff's petition.

7. Defendants admit the allegations of paragraph 5 of plaintiff's petition except that defendants deny all allegations immediately following the setting out of Section VII of the contract.

8. Defendants admit the allegations in paragraph 6 of said petition to the effect that negotiations between the plaintiff and machinists began on December 19, 1951, and that said negotiations included the proposal of certain new clauses in the contract but defendants deny each and every other allegation set forth in said paragraph 6.

9. Defendants admit that on or about April 7, 1952, the machinists did go on strike and place a picket line around the premises of the plaintiff, but deny each and every other allegation in said paragraph 7 contained.

10. Defendants admit the allegation in paragraph 8 of the said petition as to the signing of a contract between the machinists and the Griesedieck-Western Brewery Company, but deny every other allegation in said paragraph contained.

11. Defendants deny the allegations in paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19, of plaintiff's petition.

12. For further return to the order to show cause, and for answer to plaintiff's petition, these defendants state that the International Association of Machinists, District Council No. 9, hereinafter referred to as the Union, has for years been recognized by the plaintiff as the exclusive bargaining representative of Article I,

> **Section 1: Recognition:** All employees employed as machinists, machinists' apprentices, machinists' helpers to perform all turning, boring, fitting, filing, planing, shaping, babbitting, chipping. sawing, and mechanical repairs on gasoline, diesel and electric trucks and automobiles and the making, assembling, erecting, dismantling, and repairing of all machinery of all descriptions and parts thereof, including Pasteurizer and soaker carriers, and including machinist leadman, EXCLUDING all helpers in the bottling shop, boiler and refrigeration plant, employees engaged in the rigging and hoisting of all machinery, and structural iron work, the refrigerated cabinet division except for maintenance repair and erection of plant equipment not involving pipefitting, excluding sheet metal work, 10 gauge or lighter plant-wide, except for Pasteurizer and soaker carriers, excluding

electrical motors and general office, clericals, guards, professionals and supervisory employees as defined in Section 2 (11) of the National Labor Relations Act, as amended, and all other employees.

The Union was certified by the N. L. R. B., on the 25th day of March, 1948, as such exclusive bargaining agent for said employees.

13. That under and by virtue of said certification the Union has continuously been recognized by the plaintiff employer as such exclusive bargaining representative and that such representation has been evidenced by contracts over a long period of years by and between the plaintiff and the Union; that the last such contract was dated the 5th day of January, 1951 and was terminated by reason of due notice served by the Union on the plaintiff on the 29th day of October, 1951, under and by virtue of the terms of said contract.

14. That pursuant to said notice there was served on said plaintiff, by the Union, a list of proposed changes desired in said contract; copy of said changes is hereto attached, marked Exhibit "A," and by reference made a part hereof.

15. That the Union has since the 29th day of October, 1951, attempted to engage in collective bargaining with respect to the said proposed changes but that the plaintiff company has steadfastly refused unless and until the Union first agreed that Section 2 of Article VII of the Contract be deleted; that the Union has refused and still refuses to accede to this demand. That by reason of such demand by the plaintiff, and the refusal to bargain with the Union, the Union on or about March 24, 1952, filed Unfair Labor Practice charges against the plaintiff with the N. L. R. B., 14th Region, St. Louis, Missouri, and on or about April 18, 1952, the Union filed amended charges

against the plaintiff herein, all of which charges are presently pending before said Board and are now in the process of investigation and processing by said Board.

16. That by reason of the refusal of the plaintiff to bargain in good faith with the Union with respect to the matters and things called for in the proposed changes to the Contract as presented to the Plaintiff by the Union, and the refusal of the plaintiff to furnish and supply the Union with certain payroll information requested by the Union, the Union on April 6, 1952, by a vote of 206 to 14, decided to strike and has caused the premises of plaintiff to be picketed. That all of said picketing has been peaceful, orderly and lawful in all respects and has been without violence of any character.

17. That on or about April 8, 1952, the plaintiff herein invoked the jurisdiction of the N. L. R. B., by filing unfair labor practice charges with the N. L. R. B., 14th Region, St. Louis, Missouri, against the Union which said charges are presently pending before the said Board and are now in the process of investigation and processing by said Board.

18. That the purpose and intent of the said picketing has been to advise the public in a peaceful, orderly and dignified way that a labor dispute existed between the plaintiff and the Union. The defendants merely exercised their rights guaranteed them by the Constitution of the United States, Amendments 1, 5, 13 and 14, and the Constitution of the State of Missouri, Article 1, Section 10 and 29.

19. Defendants further state that at no time have they individually or collectively nor has the Union conspired, connived or unlawfully agreed among the employees of the Manufacturers Railway Company or themselves or with others to obstruct the delivery of coal or other com-

modities to or from the premises of plaintiff or to refuse to move or deliver products necessary to the operation of plaintiff's business other than by the maintenance of the said picket line which speaks for itself.

20. That the plaintiff has an adequate remedy at law and under the N. L. R. A., as amended, and the L. M. R. A.

21. That defendants by reason of plaintiff's petition have been caused to employ counsel and have been compelled to expend sums of money in their defense.

Wherefore, the premises considered, defendant prays that plaintiff's petition be dismissed and that they go hence with their costs and damages.

EXHIBIT A.

October 29, 1951.

Changes Proposed by District No. 9, International Association of Machinists to Become Effective January 1, 1952, With Anheuser-Busch, Incorporated, St. Louis, Missouri.

Article III—Section 1—Wages—The rate of wages for Machinists shall be $2.75 per hour; Machinists' Helpers—$2.30 per hour and for Machinist Apprentices—$1.625 per hour starting rate. For work on the second and third shifts, ten per cent (10%) additional shall be paid.

Section 2—No change.

Section 3—Machinists installing or erecting machinery shall be paid at the rate of $2.75 per hour. Leadmen shall receive $3.00 per hour and at least one (1) Leadman shall be employed on each job.

Section 4—No change.

Article X—Vacations—**Section 3** to provide that employees who have completed eight (8) years of service to be entitled to three (3) weeks' vacation with pay.

Article XV—Termination—This agreement signed this ..... day of ....., 19...., shall become effective as of January 1, 1952, and shall remain in effect for a period of one year and from year to year thereafter until either party serves a sixty (60) days' written notice on the other specifying a desire to modify or terminate this agreement.

In the event the National Wage Stabilizations Regulations shall provide for further upward limits of wage increases and/or fringe issues such as welfare, holidays, vacations, night shift premium, etc., over and beyond the present limits set under National Wage Stabilization Regulations, that, upon notice by either party to the other, this agreement may be reopened at any time prior to the regular expiration of the provision for wage and/or fringe issues as above set forth, with the strict understanding that should the agreement be reopened under the above procedure, any provisions of this agreement which prohibit the Union's right to strike shall be inoperative and the Union shall be free to strike providing all State and Federal Laws are complied with.

New Articles.

1. To provide that at least two (2) machinists shall be on each erection and construction job from the time said equipment arrives at the plant until it is completely installed.

2. Supervisory personnel shall not perform machinists' work or use machinists' tools.

3. Employees shall be permitted smoking privileges in each machine shop and in certain designated areas.

4. The Company to pay the sum of $4.85 per month for each employee for District No. 9, I. A. of M. Welfare Plan. See copy attached.

5. Employees called out or reporting for work shall receive not less than four (4) hours' pay.

TRIAL ON THE MERITS.

The issues having been joined, this cause proceeded to a trial on the merits on June 26, 1952, before the Honorable David J. Murphy, Judge, presently presiding in Division No. 2 of said Court.

Appearances:

Mark D. Eagleton, Esq., Roberts P. Elam, Esq., David Y. Campbell, Esq., for the plaintiff.

Robert A. Roessel, Esq., Keith M. Brownell, Esq., for the defendants.

Thereupon the following proceedings were had, to-wit:

Mr. Eagleton: I want to read into the record plaintiff's understanding of this matter with reference to the issues, so that it might facilitate the arguments and the thinking of the Court.

Before we start the evidence, or the arguments, and other proceedings, in this case, I wish to make a statement for the record, which may aid in clarifying the issues.

The plaintiff does not wish to be understood as in any way contending in this case that this Court has before it for consideration, decision or resolution, by this Court, a labor dispute.

There is reference in the petition to a labor dispute, and to a jurisdictional dispute between two labor unions. Those matters were, we believe, necessarily referred to in the petition, and we believe that they will necessarily also be referred to in the evidence.

The plaintiff, however, does not request any action by this Court with respect to, or with respect to resolving, those labor controversies. The plaintiff here seeks but one form of relief, to wit: An injunction, and it bases its right to that relief upon charges that the defendants, and the

labor union which they indisputably and admittedly represent, were and are guilty of common law conspiracy, conspiracy in violation of the Missouri statutes, and a secondary boycott. It is those three things, and those three things alone, upon which the plaintiff bases its right to relief, and the only relief sought is, as stated, an injunction to prevent defendants, and their union, from continuing to engage in unlawful conspiracies and secondary boycotts, and conduct in connection therewith.

Mr. Eagleton: Mark these as Plaintiff's Exhibits A, B and C, please.

(Documents marked for identification as Plaintiff's Exhibits A, B and C, respectively, by reporter, as requested.)

Mr. Eagleton: The first thing I want to offer in evidence, and then hand to the clerk, for a formal filing, is a stipulation in this case, which has reference to the fact that the evidence taken in this cause shall be accepted as evidence adduced in any proceeding with reference thereto, especially with reference to any temporary injunction, or the case on its merits. The stipulation speaks for itself.

The Court: It will be received in evidence.

Said Exhibit A, offered on behalf of plaintiff, received in evidence and made a part of this transcript, is, in words and figures, as follows, to-wit (caption and signatures omitted):

PLAINTIFF'S EXHIBIT A.

STIPULATION.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, by their counsel, as follows:

1. That the hearing on the order to show cause why a temporary injunction should not be granted in this case, which hearing will begin on June 26, 1952, shall be taken

and considered in all respects as the hearing both on the order to show cause why a temporary injunction should not be issued, and on the merits of this cause.

2. That the evidence adduced and the other proceedings, at the hearing on the order to show cause why a temporary injunction should not be granted in this case, which hearing will begin on June 26, 1952, shall be taken and considered in all respects as the evidence and the proceedings on the merits of this cause.

3. That, at the conclusion of the hearing on the order to show cause why a temporary injunction should not be granted in this case, which hearing will begin on June 26, 1952, this cause may be taken and considered as submitted both on the order to show cause why a temporary injunction should not be granted in this case, and on the merits of this cause, upon the evidence and proceedings at said hearing.

Dated this 26th day of June, 1952.

Mr. Eagleton: The next thing I want to offer in evidence is a stipulation as to facts, signed by the parties, and it has been marked as Plaintiff's Exhibit B. It is a stipulation of those facts upon which we agree.

The Court: It will be received in evidence.

Said Exhibit B, offered on behalf of plaintiff, received in evidence and made a part of this transcript, is, in words and figures, as follows, to-wit (caption and signatures omitted):

PLAINTIFF'S EXHIBIT B.

STIPULATION AS TO FACTS.

It is hereby stipulated and agreed by and between the parties above by their counsel, as follows:

1. Plaintiff is and at all times hereinafter mentioned was a corporation duly organized and existing under the laws

of the State of Missouri with its principal place of business at 721 Pestalozzi Street, St. Louis, Missouri. Plaintiff is engaged in the business of manufacturing and selling beer, yeast, corn products and other commodities. In connection with the operation of its business, plaintiff purchases from others large quantities of raw materials and supplies which are delivered by common carriers and private carriers and otherwise, to its plants, including its main plant located at and adjacent to its said principal place of business. In distributing its manufactured products to its customers plaintiff makes shipment by common carriers, private carriers, its own trucks and otherwise. Also in effecting distribution of beer manufactured by it, plaintiff warehouses said product in package form in public warehouses, independently owned and operated situated in the City of St. Louis, Missouri, and elsewhere. Also in effecting distribution of beer manufactured by it, plaintiff sells said produce to dealers or wholesalers whose principal places of business are situated in areas other than St. Louis, Missouri. Deliveries pursuant to such sales are made from its main plant and said public warehouses hereinabove referred to by common carriers, private carriers and to said dealers or wholesalers directly. Plaintiff employs at its main plant approximately 6,000 persons. Plaintiff, in the conduct of its aforesaid business, is engaged in interstate commerce.

2. Defendant Lloyd Weber is the business representative and Defendant Russell L. Davis is the Business Agent, of the International Association of Machinists, District No. 9. Defendants Walter Patrick, Thomas Blake, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer and Thomas Mulvaney are members of the negotiating committee of said District No. 9. Membership in said unincorporated labor organization is so numerous that it is impractical to name all members thereof as defendants herein. The defendants named, however, are

sufficient to assure adequate representation of the entire class of persons who are members of and known as the International Association of Machinists, District No. 9, hereinafter at times referred to as the "Machinists", or the "Union".

3. Plaintiff has in its employ building trades workers whose unions are members of the Building and Construction Trades Council and has collective bargaining agreements with such unions covering these employees.

4. The plaintiff has for several years recognized the said District No. 9, Machinists, as bargaining agent for a certain group of its employees. Plaintiff has negotiated with said Machinists several collective bargaining agreements covering such employees. The last such collective bargaining agreement expired December 31, 1951. Article VII of said collective bargaining agreement read as follows:

Article VII.

Section 1: Jurisdiction: The Employer agrees that all turning, boring, fitting, filing, planing, shaping, babbitting, chipping, sawing, and machinery repairing on gasoline, diesel and electric trucks and automobiles in the plant and the making, assembling, erecting and repairing of all machinery of all descriptions and parts thereof performed within the employer's plant by the employer shall be performed by employee within the bargaining unit as set forth in Section 1 of Article I of this agreement, either under its own supervision or such other supervision as the employer shall select.

Section 2: In the event it becomes necessary to have such work hereinbefore described contracted out, the Employer shall let out such work to and select contractors who have with the International Association of Machinists collective bargaining agreements which

contain provisions corresponding to or consistent with the aforesaid jurisdictional limitations.

5. On April 7, 1952, the Machinists did, in fact, go on strike and placed a picket line around the premises of the plaintiff.

6. Since the Machinists aforesaid strike at plaintiff's plant, Griesedieck Western Brewery Company, operator of plants in Belleville, Illinois, and St. Louis, Missouri, signed a contract with the Machinists covering its Belleville Plant, which contract contained the aforesaid Section 2 of Article VII, and thereupon the St. Louis plant of said Griesedieck Western Brewery Company was picketed by the Building and Construction Trades Council for a period of several days.

7. In the proper conduct of its business, plaintiff has in the past and will in the future be required to improve its plant and structures by adding new buildings thereto and by the reconstruction and remodeling of existing structures.

8. The Union has for years been recognized by the plaintiff as the exclusive bargaining representative of plaintiff's employees at its St. Louis plant described as follows:

> "All employees employed as machinists, machinists apprentices, machinists helpers to perform all turning, boring, fitting, filing, planing, shaping, babbitting, chipping, sawing, and mechanical repairs on gasoline, diesel and electric trucks and automobiles and the making, assembling, erecting, dismantling, and repairing of all machinery of all descriptions and parts thereof, including Pasteurizer and soaker carriers, and including machinists leadmen, EXCLUDING all helpers in the bottling shop, boiler and refrigeration plant, employees engaged in the rigging and hoisting of all

machinery and structural iron work, the refrigerated cabinet division except for maintenance, repair and erection of plant equipment not involving pipefitting, excluding sheet metal work, 10 gauge or lighter plant-wide, except for Pasteurizer and soaker carriers, excluding electrical motors and general office, clericals, guards, professionals and supervisory employees as defined in Section 2 (11) of the National Labor Relations Act, as amended, and all other employees."

The Union was certified by the National Labor Relations Board on March 25, 1948, as exclusive bargaining agent for plaintiff's said employees.

9. Under and by virtue of said certification, the Union has continuously been recognized by plaintiff employer as such bargaining representative for said employees and such representation has been evidenced by contracts between the plaintiff and the Union. The last such contract was dated the 5th day of January, 1951, and was terminated by reason of due notice served by the Union on plaintiff on the 29th day of October, 1951, under and by virtue of the terms of said contract.

10. The Union on or about March 2., 1952, filed unfair labor practice charges against the plaintiff with the National Labor Relations Board, 14th Region, St. Louis, Missouri, and on or about April 18, 1952, the Union filed amended charges against the plaintiff herein; on or about April 8, 1952, the plaintiff herein filed unfair labor practice charges with the National Labor Relations Board, 14th Region, St. Louis, Missouri, against the Union; and said charges filed by said Union and by the plaintiff herein are still pending before the aforesaid Regional Office of said Board; that a complaint has been issued by the Regional Office of said Board with reference to the charges filed by said plaintiff company, and same is now set for hearing on June 30, 1952.

11. This stipulation may be used in evidence by either party at any trial of the above-entitled cause, for the purpose of establishing any or all of the facts hereinabove stipulated and agreed to, and any and all previous contracts between the said plaintiff and the said Machinists Union may be introduced in evidence by either party.

12. Any of the parties to this cause may, at any trial of this cause, offer evidence as to any fact, not inconsistent with the facts hereinabove stipulated and agreed to, and which may be otherwise competent and material.

Dated at St. Louis, Missouri, this 23rd day of June, 1952.

Mr. Eagleton: The other stipulation, Exhibit C, is merely as to the use of the affidavit of Mr. Richard W. Upshaw. We have a stipulation between the parties telling why and under what circumstances his affidavit can be used, and the actual introduction of the affidavits of Mr. Upshaw will come when we get to the evidence. There will be two affidavits instead of one; the portion I gave to Mr. Roessel this morning pertains, in a large matter, to contradictions of the testimony given by Mr. Russell Davis.

Mr. Roessel: You are offering the stipulation?

Mr. Eagleton: Just the stipulation at this time, not the affidavits.

The Court: Exhibit C will be received in evidence.

Said Exhibit C, offered on behalf of plaintiff, received in evidence and made a part of this transcript, is, in words and figures, as follows, to-wit:

PLAINTIFF'S EXHIBIT C.

STIPULATION.

It is hereby stipulated and agreed by and between the parties that the affidavit of Richard W. Upshaw attached hereto may be introduced in evidence in lieu of his testimony with reference to the matters and things contained

and set forth in said affidavit, subject to appropriate and proper objection being made to any part thereof with reference to the materiality or relevancy or competency of said matters. It is understood and agreed between the parties that by thus permitting said affidavit or any part thereof to be so introduced in evidence the defendants do not admit the truth of the matters contained in said affidavit but are simply agreeing that if said Richard W. Upshaw were present he would so testify, and therefore the defendants shall be permitted to offer in evidence any other testimony they may so desire in contradiction of said affidavit or in rebuttal thereto or in explanation thereof.

Thereupon counsel presented oral arguments to the Court.

PLAINTIFF'S EVIDENCE.

Thereupon the plaintiff, to sustain the matters in its petition alleged, offered and introduced the following evidence:

Mr. Eagleton: Mark these as Plaintiff's Exhibits D and E, please.

(Documents marked for identification as Plaintiff's Exhibits D and E, respectively, by reporter, as requested.)

Mr. Eagleton: At this time plaintiff wants to offer in evidence the affidavit of Mr. Richard W. Upshaw, referred to in the previous stipulation, as he is presently in New York City. It is marked Plaintiff's Exhibit D. And an extension of that affidavit, which is Plaintiff's Exhibit E. I have given Mr. Roessel copies of that heretofore. Exhibit E is merely an extension, because it came after Mr. Davis's affidavit. I am offering those as the testimony of Mr. Richard W. Upshaw, that he would so testify if he were here.

Mr. Roessel: They are subject to objections as to the relevancy, competency, and so forth.

Mr. Eagleton: Are you making any objections?

Mr. Roessel: With that understanding these may be admitted.

The Court: With what understanding?

Mr. Roessel: With the understanding they are admitted subject to the objections.

The Court: You will have to object to it and have a ruling on it.

Mr. Eagleton: It is admitted if he were present he would so testify. That goes to Exhibits D and E. The stipulation said they are subject to appropriate and proper objections with reference to competency, relevancy or materiality, if objections were made.

Mr. Roessel: I want to make the general objection at this time that it does not pertain to any matter material to the determination of this cause, it is incompetent, and further that the statements contained in the affidavit are irrelevant to any matter or fact at issue in this lawsuit.

Mr. Eagleton: His objection is to the affidavits as a whole.

The Court: That's a pretty broad objection.

Mr. Roessel: I know it is. I think after you read them you will get the idea I have in mind.

Thereupon the Court, by agreement of counsel, announced an adjournment until 9:30 o'clock A. M. of the following day, Friday, June 27, 1952, at which time Court convened and the following further proceedings were had, to-wit:

The Court: I will overrule the objection as to the affidavits. They will be received in evidence.

Mr. Roessel: I would like to make a few additional objections.

The Court: To the affidavits?

Mr. Roessel: Yes.

The Court: I anticipated that.

Mr. Roessel: I know you did. It won't change the effect of the thing a bit.

I want to make these additional objections to the affidavit of Mr. Upshaw, with particular reference to page 2, the second line, beginning at "that to his personal knowledge for a number of years prior to and subsequent to the year 1939"—then it proceeds on down and has reference to a jurisdictional dispute between the millwrights and the machinists, and that it manifested itself by recurring demands made from time to time on general construction contractors, and so forth. I want to object to that on the ground whether there was or was not one, or six, jurisdictional disputes between the millwrights and the International Association of Machinists has nothing to do with facts and issues in this case. That the issues here have to do with a dispute that existed over a contract misunderstanding, or whatever you want to call it, between this plaintiff and these defendants.

Mr. Eagleton: Does the Court want to rule on those objections one at a time?

Mr. Roessel: Go ahead.

The Court: I'll overrule the objection.

Mr. Roessel: With respect to page 3, in the first line, "that the said Machinists, further, through words and conduct have indicated that they will insist that like action be taken by other Breweries"—. Supposing they do? So what? That's a situation that is irrelevant and incompetent in this situation, what they do in other breweries.

Mr. Eagleton: It goes right to the very gravamen of the complaint, that they are trying to have the plaintiff bring pressure on the contractors and other breweries, and it is also one of the charges and allegations in the petition.

The Court: You did agree that if Mr. Upshaw were here he would so testify?

Mr. Roessel: Yes. There is no question about that.

The Court: Overrule the objection.

Mr. Roessel: On page 3, line 12, it says: "that affiant knows that in the whole St. Louis area, which includes all of the City of St. Louis and St. Louis County," there are none of the contractors here who have any working agreement with the Machinists Union. So what? We are not asking them to have working agreements with the Union. There is no competency or relevancy in that statement to the issues here.

The Court: Overruled.

Mr. Roessel: We wanted to object to that specifically.

The Court: I overruled the objection.

Mr. Roessel: On page 3, I think that this is it, it said this particular clause is an effort on the part of the defendants to have the plaintiff refuse to deal with contractors who do not have working agreement. We say that is immaterial and certainly irrelevant.

The Court: It's all the same. Overruled.

Mr. Roessel: The fourth line from the bottom, page 3, "that any strike such as that mentioned in plaintiff's petition necessarily causes plaintiff to suffer irreparable losses." I say that is an unadulterated conclusion.

Mr. Eagleton: He shows, in the prelude, he has been with the company twenty-five years and is familiar with all operations of the plant, and goes on to say that corn products, yeast and beer once started in processing will be irreparably damaged if there is a strike. It is also a statement in the petition.

Mr. Roessel: I say "irreparable" is a conclusion.

Mr. Eagleton: The word "irreparable" can be stricken as a conclusion.

The Court: Does that satisfy your objection?

Mr. Roessel: No; it doesn't.

Mr. Eagleton: It may be stricken, the word "irreparable".

The Court: I'll sustain the objection with reference to the use of the word "irreparable". The Exhibits D and E will be received in evidence.

Said Exhibit D, offered on behalf of plaintiff, received in evidence and made a part of this transcript, is, in words and figures, as follows, to-wit (caption omitted):

PLAINTIFF'S EXHIBIT D.

AFFIDAVIT.

Richard W. Upshaw, being duly sworn upon his oath, doth state:

That he is and at all times hereinafter mentioned was a vice-president of the plaintiff company; that in his official capacity for said plaintiff company he is familiar with the conduct and operation of the various phases of plaintiff's business, having been with said company for more than a quarter of a century; that in his official capacity for the company he has for a number of years carried on negotiations with the International Association of Machinists, District No. 9, hereinafter at times referred to as the "Machinists" or the "Union"; that he carried on negotiations with the representatives of the defendants prior to and immediately subsequent to April 7, 1952; that he is familiar with the contracts that have been made from time to time between the plaintiff company and various Contractors in the City of St. Louis for the construction and erection of new buildings and the remodeling and repair of existing structures of the plaintiff and has represented the plaintiff company in connection with said contracts and in the controversies with Contractors or their employees in connection therewith; that to his personal knowledge for a number of years prior to and subsequent to the year 1939 and continuing down to the present time there has existed in the St. Louis area an unresolved jurisdictional dispute between the Millwrights, affiliated with the Building and Construction Trades Council, and the Machinists, who are not members of said Building and Construction Trades Council; that this dispute between said Millwrights and said Machinists is manifested by

recurring demands made from time to time on general construction Contractors by the said Millwrights and by the said Machinists that the disputed work be given exclusively to members of their respective organizations; that as a result of said dispute picketing of jobs by the labor organization whose members were not given the work has occurred on several occasions; that as a result of said picketing the plant of the plaintiff company has been shut down and the efficiency of its operation has been impaired, causing great financial loss to the plaintiff; that he is familiar with Article VII and Sections 1 and 2 thereof of the contract between plaintiff and said Machinists as set forth in the above entitled cause on page 3 of plaintiff's "Petition for Injunction"; that said Machinists through words have stated and by their conduct have indicated to affiant that by Section 2 of Article VII above referred to plaintiff shall be required to insert in any and all contracts plaintiff makes with outside organizations for new construction or for the reconstruction of existing structures a provision that the work of installing, erecting and moving machinery—the items which are the subject of the jurisdictional dispute aforementioned between the said Machinists and the said Millwrights—shall be performed exclusively by the said Machinists and that the plaintiff should not contract or deal with any general Contractor for said work who will not consent to the insertion of such a provision in all contracts with the plaintiff; that the said Machinists, further, through words and conduct have indicated that they will insist that like action be taken by other Breweries in the St. Louis area all for the purpose of compelling said general Contractors to use Machinists and not to use Millwrights in the installing, erecting, and moving machinery and that if said Contractors fail so to do that they shall run the risk of receiving no business from said Brewers. Affiant further states that he personally knows that it is vitally necessary to the continuing and successful operation of the plaintiff's

plant that it be permitted to do new construction work by adding new buildings and by the remodeling and reconstruction of existing structures; that affiant knows that in the whole St. Louis area, which includes all of the City of St. Louis and St. Louis County, none of the Contractors, large or small, who build, repair or construct buildings and structures as aforementioned has any contract or working agreement with said Machinists Union and that said situation has obtained in like manner at all times since 1939 and for many years prior thereto, with the exception that said Machinists have and do install printing presses and related machinery for said Contractors; that under these circumstances, the insistence of said Union on the insertion of said Section 2 of Article VII in said contracts, makes it practically impossible for plaintiff to get bids on said work or to have it done and is an effort on the part of said Union to have the plaintiff refuse to deal with said Contractors and their employees and likewise is an effort to have said Contractors and their employees to refuse to deal with plaintiff; that affiant personally knows that in the conduct of plaintiff's business it is necessary at all times to have yeast, corn products and beer in various stages of processing and that once such processing has started it must be continued to completion or else a large financial loss will be incurred; that any strike such as that mentioned in plaintiff's petition necessarily causes plaintiff to suffer losses; affiant further states that he personally knows that plaintiff by reason of the strike of the Machinists on April 7, 1952, mentioned in plaintiff's Petition in this cause, was unable to obtain a sufficient production force to maintain its operations and was thereby forced to close down its plant for a period of approximately 12 days, causing losses by reason of the matters hereinabove mentioned. Affiant further states that during the negotiations between the plaintiff company and said Machinists' Union, the defendants stated that a strike would be called by said Machinists unless the plaintiff

yielded to the position of the Union and inserted or agreed to insert Section 2 of Article VII in a new contract; that the defendants then stated that they could agree with the company on all other matters in dispute, provided that Section 2, Article VII, was inserted in said new contract; that otherwise the defendants stated that they would not agree to any contract whatsoever until and unless said Section 2, Article VII, was inserted in the contract, and that under the circumstances they would speciously contend that they were in disagreement on other matters aside from the insertion of Section 2, Article VII, in said contract, stating that they did not want to openly acknowledge that the only issue between the parties related to the insertion of Section 2, Article VII, in said new contract; that, in other words, said defendants stated that they would arbitrarily continue to make further demands for wage increases or any other arbitrary matter in order that they would not have to reveal the true position with reference to Section 2, Article VII; that said defendants stated they had a right—an absolute right—to resort to such tactics as a matter of strategy, and when advised by the affiant that it was the position of the plaintiff company that it could not again sign such a contract because it had been advised by its counsel that it might subject itself to criminal sanctions and treble damages, the defendants stated that they were not concerned with any such matters and that was solely the problem of the plaintiff company which, they stated, was being improperly advised under the circumstances; that the defendants stated that the strike mentioned in plaintiff's petition was called as a result of the failure of the plaintiff company to thus insert Section 2, Article VII, in said new contract, and defendants thereafter repeatedly stated that said strike would continue and that picketing as mentioned in said petition would continue as therein mentioned until the plaintiff company yielded to the position of the Union with reference to said Section 2, Article VII.

Affiant further states that he will not be able to be present for the hearing of said cause now set for Thursday, June 26, 1952, because he has to be in New York City at that time.

(Signed) Richard W. Upshaw,
Richard W. Upshaw.

Subscribed and sworn to before me this 20th day of June, 1952.

My term expires September 7, 1955.

(Signed) F. R. Barrett,
F. R. Barrett,
Notary Public.

Commissioned within and for the County of St. Louis, Missouri, which adjoins the City of St. Louis, Missouri, where this act was performed.

(Seal)

Said Exhibit E, offered on behalf of plaintiff, received in evidence and made a part of this transcript, is, in words and figures, as follows, to-wit:

PLAINTIFF'S EXHIBIT E.

FURTHER TESTIMONY OF RICHARD W. UPSHAW.

Subject to the terms and conditions of the Stipulation heretofore agreed to, with reference to the Affidavit of Richard W. Upshaw, and by way of direct testimony and in rebuttal to the Affidavit of Russell Davis, it is agreed that if the said Richard W. Upshaw were present, he would testify substantially as follows:

That it was customary for a great number of years prior to 1947 to have all new construction work done by independent contractors and builders in this area; that

Anheuser-Busch, Inc., has no facilities for building such structures with its own employes; that in practically every building that is erected, new machinery of one sort or another must be placed therein; that in the construction of said buildings and in the moving and placement of machinery it is always customary to have the work in connection therewith done by said contractors through the employes of said contractors; that the only exception with reference to said practice has been in connection with work done in June of 1949 by the Fruin-Colnon Contracting Company, who was engaged to construct a feed storage and shipping building, and that when a controversy arose between the Machinists and the Millwrights it was decided by the Management on that occasion to permit the work to be finished by the Machinists, whereupon, the Carpenters walked off the job and filed unfair labor charges against the Plaintiff Company; that all of the building contractors in this whole area have contracts with the Millwrights with reference to the moving and erecting of machinery in new buildings which said contractors are constructing, and that none of said contractors, except as hereinabove noted in the original Affidavit, have any contracts of employment with the Machinists; that in March of 1951 the Carpenters were informed that the Plaintiff Company would not again re-insert Section 2 of Article VII in its contract, and that no contract with the Machinists has been signed since said time, nor has any new construction work been done.

AUGUST A. BUSCH, JR.,

a witness of lawful age, produced, sworn and examined, testified on behalf of the plaintiff as follows:

Direct Examination, by Mr. Eagleton.

Q. Please state your name to the Court. A. August A. Busch, Jr.

Q. What is your business, or occupation? A. President and General Manager of Anheuser-Busch, Incorporated.

Q. How long have you occupied the position of being President of this brewery? A. Since 1946, at the death of my brother.

Q. And prior to 1946 what was your occupation, or affiliation, with the brewery? A. I was Superintendent, General Manager and Vice-President for the past twenty-five years.

Q. Prior to your brother's death, or including the twenty-five years from his death? A. No, prior to brother's death. Thirty years, in total.

Q. I take it, as Superintendent, General Manager, Vice-President and President of Anheuser-Busch, Inc., that you are familiar with the various phases of its operation as a brewery, in connection with the things that are vitally necessary to keeping it operating? A. I think I am.

Q. By way of a little background, how much space does this brewery occupy in St. Louis? A. Approximately seventy-two city blocks.

Q. It's value, from a plant standpoint, is well over One Hundred Million Dollars? A. I would say it's in that range.

Q. In the brewery business, such as you are in, do you have any facilities, or equipment, to do construction work with your own employees? A. No, sir.

Q. Has it been the history, and practice and custom over all of the years you mentioned, during which you were Superintendent, General Manager, Vice-President and President, thirty-one years, to have any construction work, in which the plant expands, or puts in new buildings, or adds new structures to old buildings, to have that done by contractors who are capable of doing that work? A. Yes.

Q. You wouldn't be able to do any portion of that work yourself, except to have that done through contract? A. Yes.

Q. Do you know of your own knowledge for your business to survive, thrive and succeed it is necessary to expand, and from time to time add new buildings to the older structures? A. It is——

Mr. Roessel: I object to the part of the question if he knows in order for the business to survive it's necessary, and so forth.

Mr. Eagleton: I'll take out the word survive.

The Court: All right.

Mr. Eagleton: You did answer?

The Witness: Yes, sir, it is.

Q. (By Mr. Eagleton) Mr. Busch, do you employ regularly, or steadily, certain machinists down at your plant there, the Anheuser-Busch, Inc., in St. Louis? A. Yes. To the best of my knowledge we have had some two hundred and twenty machinists steadily employed for the last five years.

Mr. Roessel: Are those machinists you have employed now, and have employed steadily for the past five years, I assume you had them immediately prior to April 7, 1952?

The Witness: Yes.

Q. (By Mr. Eagleton) Are those machinists which you have in your employ occupied eight hours a day with certain tasks at the brewery day in and day out? A. Yes. Day in and day out.

Mr. Roessel: I object to that. It's immaterial to any fact or issue in this case, if they are employed eight hours there every day. We don't deny it is necessary to contract the work out.

The Court: All right.

Mr. Eagleton: It's admitted. Your machinists are employed steadily and regularly every day?

The Witness: Right.

Q. (By Mr. Eagleton) Now, did you have anything to do with the negotiations with the Machinists, District No. 9, the International Association of Machinists, either Mr. Weber or Mr. Davis, prior to the time of the strike on

April 7, 1952? A. No. Mr. Upshaw handles our labor relations policy.

Q. And has handled those relations for quite a number of years? A. Yes.

Q. Mr. Upshaw is in New York City at the present time? A. Yes.

Q. And will be there for some time? A. Yes.

Q. Mr. Busch, subsequent to the strike, some two or three days after the strike had been in force, I would say April 9, 1952, did you then have contact with Mr. Weber with reference to this matter? A. I met Mr. Weber at the Congress Hotel with Mr. John Wilson.

Q. Did you at that time, at the meeting with Mr. Weber, discuss clause, or Section 2 of Article VII that was in dispute, as to whether or not it would be reinstated in the contract, that you contended that it be eliminated, or modified, so you could live under it? A. I certainly did, and endeavored to get the entire situation of the strike being settled. The strike started April 7, and the meeting was on April 9th.

Q. What did Mr. Weber say at that particular time was the reasons he wanted this Section 2 of Article VII put in the contract?

Mr. Roessel: We object to that, after the strike and negotiations any conversations he may have had with Mr. Weber, as to why Mr. Weber wanted this particular clause retained in the contract. The issues here are these: This clause was in the contract, without dispute, from the first part of January, 1951, and continued in the contract. Now it's there. What the reasons were after the strike has occurred that Weber said he wanted that clause continued certainly is going beyond the issues, and has nothing to do with any fact or issue in this lawsuit.

Mr. Eagleton: Your Honor, it not only shows the reason for the strike, and the contentions at the time the injunction was issued by the Court the contract had expired December 31, 1951, and they were attempting to have it

reinserted, but this is an admission against interest as to the reason why.

Mr. Roessel: This is immaterial, as to a conversation the parties may have had. The facts have been established.

The Court: Overrule the objection. He may answer.

Mr. Eagleton: Read the question, please.

(Last question repeated by reporter, as requested, as follows: "Q. What did Mr. Weber say at that particular time was the reasons he wanted this Section 2 of Article VII put in the contract?")

The Witness: He had us over the barrel, so to speak, and the pressure was against Anheuser-Busch, and that we were the largest employers of machinists and we could control the contractors and force the contractors to employ machinists.

Q. (By Mr. Eagleton) Did he tell you that is what you had to do in order to get along with them? A. That's correct. Every other phase of the contract—as I understood it every other phase of the contract was acceptable with the exception of Section 2 of Article VII, which he insisted be in the contract.

Q. Did he insist it be in as is, without any modifications? A. As is. We asked for modifications, to see if we could arrive at something to modify it so it would be acceptable to our attorneys, Mr. Shepley and your firm, Mr. Eagleton, and you told us it was conspiracy.

Q. Had you been informed by the Shepley firm in 1951 if you attempted to put pressure on the contractors to change their association with their employees that you would be guilty of conspiracy? A. Yes.

Q. Under the laws of the State of Missouri? A. Yes.

Q. Did you tell Mr Weber that? A. Yes.

Q. And what did he say to that? A. He told us it was the proper time to get the thing settled. It had to be that or else.

Q. He wanted you, because you are the largest employer of machinists, to put the pressure on the contractors? A. Yes. If Anheuser-Busch signed the contract with that clause in it the rest of the breweries would have to go along.

Q. And after that the machinists could get the work now being done by the millwrights? A. Yes.

Q. When you employ a construction company, such as Fruin-Colnon Construction Company, or the Gilsonite Construction Company, and, in years gone by, the John Hill Construction Company, or the Dickie Construction Company, to do new construction work of the type we have mentioned here, [illegible] the necessary expansion of your plant, I'll ask you if after they are employed and engaged under contract if you have anything to do with controlling their employees whatsoever? A. No. Certainly not.

Q. You can't hire them? A. No.

Q. You can't fire them? A. No.

Q. You can't give them any directions? A. No.

Q. You can't tell them what union they should belong to? A. Certainly not.

Q. Or what craft? A. Certainly not.

Mr. Eagleton: That's all.

Cross-Examination, by Mr. Roessel.

Q. Just one or two questions, Mr. Busch. This clause, the second paragraph of Article VII, had been the subject of discussion for some time, hadn't it? A. Yes, sir. To my knowledge it had.

Q. Were you one of the parties who went to Washington and discussed that clause with the top officers of the Machinists Union? A. I was not.

Q. Do you know that someone from your organization went there? A. Yes. Mr. Upshaw went there.

Q. Do you know this clause was submitted to the National Labor Relations Board officials in the City of St. Louis? A. I did not.

Q. You don't know that? A. No.

Q. You wouldn't say that wasn't a fact, would you?

Mr. Eagleton: I object to that. He can't be required to say something he don't know.

The Court: Obviously he couldn't answer that.

Q. (By Mr. Roessel) You know, as a matter of fact, after this trip to Washington, and after this discussion with the officials of the National Labor Relations Board, by agreement you did put that clause in the contract?

Mr. Eagleton: I object to the form of the question, because he includes in there after discussion with officials in Washington. It's an assumption there was such a discussion. As a matter of fact, we dispute very definitely the averments that are contained in the affidavit, with reference to that matter. Mr. Ingamells is here and can testify it never took place.

Mr. Roessel: He doesn't deny that people from his company went to Washington?

Mr. Eagleton: That's right.

Mr. Roessel: He doesn't deny that there was a conference with the National Labor Relations Board officials here. All I say is after all that was done if he doesn't know that this plaintiff put, by agreement, that very clause into its contract.

Mr. Eagleton: That's a simple matter, getting to it as a matter of date. What time did these conferences in Washington take place at which you were not present?

The Witness: I don't know.

Mr. Eagleton: And what time was the contract entered into? It speaks for itself.

Mr. Roessel: These conferences took place prior to this time, and after this conference, whether it was six months, or whatever it was, when the 1951 contract was up for negotiation this company, of its own volition, agreed to insert that clause in the contract.

Mr. Eagleton: The thing I want is to make sure we are not misunderstanding each other, by virtue of window

dressing. I have no objection to Mr. Busch stating the date of the conference. We know the date of the contract. It runs from January 1, 1951, to December 31, 1951. All we have to ascertain, without the innuendoes, is when did the conference take place. Was it in 1950?

Mr. Roessel: It took place, relatively speaking, immediately prior to the negotiations for the 1951 contract.

Mr. Eagleton: Wait. I'll see if we can admit that. He doesn't know when it took place. Let's say it was prior to the contract in January, 1951.

Mr. Roessel: We will show, in due time, that conference took place in anticipation and in an attempt to clear up the situation with respect to the 1951 negotiations when that clause was requested to be put in the contract, and there isn't any dispute, if your Honor please, the clause did appear in the contract.

Mr. Eagleton: Those are matters of argument. They are not evidence. If he knows of his own knowledge.

The Witness: I don't know that.

Q. (By Mr. Roessel) You don't know, Mr. Busch, it was in the 1951 contract?

Mr. Eagleton: Yes.

Q. (By Mr. Roessel) You do know the 1951 contract was arrived at by a negotiation and agreement between your company and this union? A. It would have to be.

Q. Why sure.

Mr. Eagleton: That's right.

Q. (By Mr. Roessel) I'm going to ask you this, Mr. Busch, if you know when the time came for the renewal, or whatever you want to call it, of the 1951 contract if your company wasn't served with notice by this union that it desired to terminate this contract and proposed certain changes, all of which were submitted to your company? Do you know that? A. No, I do not.

Q. I'll ask you whether or not your company at any time served this union with notice that at the contract negotiations for the 1952 contract, whether or not your

company at any time advised the union of your position concerning this second paragraph and of your request that be the subject of discussion?

Mr. Eagleton: If he knows?

The Witness: I do not know that.

Mr. Roessel: That's all, Mr. Busch.

(Witness excused.)

OLAF P. VOGEL,

a witness of lawful age, produced, sworn and examined, testified on behalf of the plaintiff as follows:

Direct Examination, by Mr. Eagleton.

Q. Will you please state your name, sir? A. Olaf P. Vogel.

Q. How old a man are you? A. Forty-four.

Q. Are you a married man? A. Yes, sir.

Q. And you live where? A. 3239 Ohio.

Q. By whom are you employed? A. Manufacturers Railroad Company.

Q. And in what capacity? A. Switchman.

Q. How long have you been with the Manufacturers Railroad Company, as a switchman? A. About nine and a half years.

Q. Were you working for that company on the 18th day of April, which was a Friday morning, 1952, as a switch foreman in chage of a switch movement that was attempting to be made, running southward on the north tracks? I am referring to the crossing at Pestalozzi Street in the City of St. Louis? A. Yes.

Q. What happened at that time with reference to the pickets of the defendants, the Machinists Union, when you came to the public crossing at the north side of Pestalozzi Street, heading south, with your cut of cars? A. We couldn't get through. There were men on the track.

Q. How close up to the men did you come in an effort

to get through before you stopped? A. Some of them, twelve inches.

Q. Twelve inches? A. Or three feet.

Q. The track runs north and south? A. Yes, sir.

Q. The same as Seventh Street? A. Yes.

Q. The cut of cars were all south of the engine, is that correct? A. Yes.

Q. The engine was at the north end of the cars? A. Yes.

Q. You were the switch foreman? A. Yes.

Q. When you came down to the southernmost end of that cut of cars, which stopped twelve inches from the pickets, at the public crossing on Pestalozzi Street, will you describe to the Court how the pickets were moving and their proximity to the drawbar of the southernmost car? A. There was one or two in between the tracks at all times. At one time I counted, there was fourteen pickets at one time.

Q. In front of your train movement? A. Walking back and forth.

Q. Did they ever, at any time at that time, clear your track so your movement could go forward? A. No, sir.

Q. And these men that were walking and staying right in the track, were they standing in the proximity of twelve or sixteen inches from the drawbar of the southernmost car? A. Sometimes they were further, but they were awful close.

Q. It might have been a matter of two or three feet? A. Yes.

Q. At that particular time I'll ask you—will you please stand up Chief Casey—this is Joseph Casey of the Metropolitan Police Force of the City of St. Louis—did you see him in the act of talking to these pickets and handing any literature to them, or paper to them, advising what they should or should not do with respect to that picketing? A. He had some kind of literature.

Mr. Roessel: Who had that?

The Witness: Chief Casey.

Mr. Roessel: He was giving that to the pickets?

The Witness: I don't know who he was giving it to.

Q. (By Mr. Eagleton) Did that action on the part of the pickets, in staying in such serious proximity to that train, did it prohibit your movement of cars from going any further? A. Yes.

Q. Because it endangered their lives and limbs in any dispute that may raise between you? A. Yes.

Mr. Eagleton: That's all.

Cross-Examination, by Mr. Roessel.

Q. Do I understand on a public crossing these pickets were moving up and down these railroad tracks? A. Yes.

Q. Were they arrested for trespassing, do you know? A. They were on the sidewalk.

Q. They were on the sidewalk. They weren't on the public crossing then, were they?

Mr. Eagleton: The sidewalk is part of the crossing.

The Witness: The sidewalk is part of the public crossing.

Q. (By Mr. Roessel) They were on the sidewalk of a public street, is that right? A. Yes. I guess it's a public street.

Q. And they were walking up and down there? A. Yes.

Q. Isn't it a fact the crew saw the pickets and observed the picket line and refused to go through? A. No. We tried to go through.

Q. Regardless. And what stopped you from going through? A. Too many men on the track.

Q. Is the track and sidewalk the same thing? A. Yes.

Q. Is that on the property of Busch's? A. It's on Pestalozzi Street. The south sidewalk on Pestalozzi.

Q. Those pickets were on the sidewalk, or street, whatever it may be, which you say is public, and by reason of that you stopped the train because you didn't want to run over them? A. Yes.

Q. Was there any complaint made to the Police Department to stop these pickets from trespassing, or interfering with your train? A. I don't know. I never made no complaint to them. The Superintendent was there and some of the other officials.

Q. Why was Mr. Casey there? A. I don't know. I didn't call him.

Q. The pickets weren't threatening anybody? A. Not that I know of.

Q. You didn't see any bricks, or clubs, around there? A. No.

Q. The pickets were walking up and down on a sidewalk that happened to be occupied by a railroad track? A. Yes.

Q. That's all that occurred. A. I couldn't get through.

Mr. Roessel: That's all.

Redirect Examination, by Mr. Eagleton.

Mr. Eagleton: Mark this as Plaintiff's Exhibit F.

(Photograph marked for identification as Plaintiff's Exhibit F, by reporter, as requested.)

Mr. Roessel: We have no objection to the photograph.

Q. (By Mr. Eagleton) I have had the reporter mark this picture as Plaintiff's Exhibit F. I will show you this and ask you if this particular picture shows the southernmost car, which we were talking about, that was prohibited from moving further, by reason of the pickets, and shows the approximate position which the pickets kept themselves in during that time? A. That's right. They're about right there.

Mr. Roessel: I have no objection to the photograph.

Mr. Eagleton: I think that's all.

Recross-Examination, by Mr. Roessel.

Q. Excuse me. Do you know whether or not these pickets were requested to get out of the way of your train? A. I don't know.

Mr. Eagleton: He doesn't know himself. Casey does.

(Witness excused.)

JOSEPH E. CASEY,

a witness of lawful age, produced, sworn and examined, testified on behalf of the plaintiff as follows:

Direct Examination, by Mr. Eagleton.

Q. Will you please state your full name? A. Joseph E. Casey.

Q. Your business, or occupation? A. Assistant Chief of Police.

Q. Of the Metropolitan Police Force of the City of St. Louis and State of Missouri? A. Yes.

Q. And you were such on the 18th day of April, 1952, in this City? A. Yes.

Q. Were you called in the performance of your duty as Assistant Chief of Police of the City of St. Louis to Seventh and Pestalozzi that morning, by reason of the fact the pickets were stopping movements of trains at that place? A. I don't recall, Mr. Eagleton, whether I was called. But I was in the habit, I made it a practice, to make that my first stop each morning. I arrived there about nine o'clock in the morning.

Q. Friday, April 18, 1952? A. Yes.

Q. And at the time you were by there—may I show you Plaintiff's Exhibit F, and show you a picture of a train that's stopped there, you may see yourself, somewhere in the picture—is that about the condition that maintained there at the time you got there? A. Yes.

Q. Do you see yourself in that picture? There is somebody in uniform? A. That's Captain Mitchell.

Q. You were there when that train was in that position and the pickets in that position? A. I arrived there shortly before Captain Mitchell that particular morning.

Mr. Eagleton: Mark this as Plaintiff's Exhibit G.

(Document marked for identification as Plaintiff's Exhibit G, by reporter, as requested.)

Q. (By Mr. Eagleton) This Plaintiff's Exhibit G, I'll ask you what that is? A. This is a copy of an opinion given to the Police Department, upon request, by our City Counselor, who are the legal advisors of the Police Department.

Q. Did you have a number of those copies of that opinion with you on that day? A. I always carry them in the police car, we have copies of this, because part of my job is keeping abreast of the labor situation for the Police Department.

Q. When the pickets were preventing the removal of that train did you hand one or more of these to the pickets there? A. Yes.

Q. How many? A. Just one.

Q. One individual picket? A. Yes.

Q. After that what did he do with that, as far as you know? A. Could I explain what led up to handing him this?

Q. Go ahead. A. When I arrived at the scene, about nine o'clock, I observed a considerably large group of pickets more or less circling. I judge, I didn't count them, I judge about fourteen or fifteen. They were circling around in a very small area that covered just a little bit more than the center track, the railroad track, upon which there were three or four, maybe five, carloads of coal that had been stopped maybe a couple of feet north of which I would consider the sidewalk, the sidewalk line.

Mr. Roessel: How far from the sidewalk line?

The Witness: I would say a couple of feet. Shortly after I arrived there Chief O'Connell happened to pass——

Q. (By Mr. Eagleton) You don't have to give all those details. What happened after they got this thing from you? Did they keep on picketing? A. They kept on picketing. I observed them for a couple of minutes then I inquired from one of the pickets who was in charge of the pickets. They called a man, a short, stocky, rather dark complected man, I don't recall his name. He told me—I said, "Now, this form of picketing is contrary to legal picketing. You're obstructing the sidewalk, and there's entirely too many of you within this small area. I want to read to you a copy of the opinion given to us," and I did.

Q. You did? A. Yes. I said, "Would you like to have a copy of this?" He said, "Yes. I would like to take it up to the boss. He's in the office." I said, "O. K." Before he left he ordered all but about four of them to leave, leaving approximately four that proceeded to walk back and forth.

Mr. Roessel: Where? On the sidewalk.

The Witness: On the sidewalk. It's about six feet on either side of this railroad train.

Q. (By Mr. Eagleton) But one or more of the group at all times would be in the track? A. Yes.

Mr. Eagleton: That's all.

Cross-Examination, by Mr. Roessel.

Q. The track there is the same as the sidewalk?

Mr. Eagleton: No. The track crosses the sidewalk.

The Witness: Yes.

Mr. Eagleton: The sidewalk runs east and west, and the track runs north and south.

Q. (By Mr. Roessel) Major Casey——

Mr. Eagleton: Colonel Casey.

Q. (By Mr. Roessel) Colonel Casey, at the time you went down there was there any disorder, and rough stuff,

or evidence of violence? A. No, sir. I never heard any remarks passing between any of them.

Q. These pickets were walking in a perfectly orderly way? A. Insofar as any names, or talk was concerned.

Q. You took this paper, which purports to be from the City Counselor, advising them, citing Section 249 of American Jurisprudence, which states "Obstruction of access," and by this they were advised as to violating the premises with respect to ingress and egress. Were they doing anything about violating that? A. I made inquiry from Mr. McGuire, as to why the train was tied up. He said they wouldn't move through because of the pickets blocking this place. That was the only information I would have as to why they were concentrated around there. In my opinion they were circling around in large numbers in that particular space.

Q. Did you make any arrest, saying "If you don't desist"—— A. I did not make any arrest. I always advise the people if they are fully aware of the situation and then if they do not correct it I make an arrest. I would have made an arrest if they kept the same number of people in that particular space.

Q. You read them this section of American Jurisprudence. After you did all that and you made a request of these parties there to modify their activity there they did modify their activity and then you had no further complaint? A. Yes, sir.

Mr. Roessel: That's all.

(Witness excused.)

CLARENCE LAMKEN,

a witness of lawful age, produced, sworn and examined, testified on behalf of the plaintiff as follows:

Direct Examination, by Mr. Eagleton.

Q. Will you please state your full name? A. Clarence W. Lamken.

Q. How old a man are you? A. Thirty-five years.

Q. Married? A. Yes.

Q. Where do you live? A. 5580 Maple.

Q. In the City of St. Louis? A. Yes.

Q. You are a railroad engineer? A. Yes.

Q. Employed by the Manufacturers Railway Company? A. Yes.

Q. You were employed on April 18, 1952, in that same capacity? A. Yes.

Q. Were you a railroad engineer on that morning, about ten-thirty in the morning, operating a Diesel engine eastwardly on Dorcas Street? A. No. That's not Dorcas Street. It's a cross lead into Bevo Mill.

Q. On what other north and south street? A. Second Street.

Q. Where is Dorcas with reference to Pestalozzi? A. It would be a block north.

Q. It's in South St. Louis? A. Yes.

Q. Down at the plant of Anheuser-Busch, Inc.? A. Yes.

Q. Had you gone in with other members of your crew to get some loads out of Anheuser-Busch? A. Yes.

Q. And you were starting away from the loading dock, headed east, about to cross Second Street, running north and south in the City of St. Louis, Missouri? A. Yes.

Q. Confining yourself to that situation there, will you tell us what happened with reference to defendant's pickets at that time? Anything they did to prohibit your movement? A. I received a signal, a hand signal, from the switchman, to pull forward east and as I proceeded to do so, and about the time I came to Second Street the pickets formed a tight circle, or close circle, in front of the engine.

Q. How close did they come to your engine in forming this close and tight circle? A. They stayed in the street.

Q. How close did your engine come up to them? A. Six feet.

Q. Then did they move, or did they keep men in front

of the track on which your engine was being operated? A. They kept men in the track.

Q. How many men were in the circle in this limited space? Were they arranged so some of them would always be on the track? A. Yes.

Q. Did they stop you from going forward? A. It would, with respect to safety of the pickets.

Q. Ordinarily, in operating the engine, you operate only on signals given you by the crew? A. Yes.

Q. You had been given a signal your drag was going to pull east? A. Yes.

Q. Did you, when you got up close to these men, within six feet of them, did you stop on your own, because of the burden of not causing them any disaster, or did you receive a signal? A. I did not receive a signal. I did it on my own.

Mr. Eagleton: That's all.

Cross-Examination, by Mr. Roessel.

Q. At that particular location is Anheuser-Busch, Inc., completely surrounded by buildings, in this particular area you discussed? A. Well, they don't surround this particular area.

Q. Is it in close proximity to their plant? A. Yes.

Q. This sidewalk and street is more or less together. It's not a separate sidewalk? A. As far as I know it's one sidewalk there at that particular point.

Q. This is paved? A. Yes. Second Street is paved.

Q. A. ' the pavement constitutes the area over which people walk? A. Yes.

Q. And in front of your engine is where about three pickets stood, they didn't move, and as a result you didn't run over them and you didn't continue on with your engine? A. They were moving, inasmuch as they were moving in a circle.

Q. Was any threat made to you of violence of any sort? A. No, sir.

Q. It was peaceful. The only thing was they were on the track and you stopped? A. Yes.

Mr. Roessel: That's all.

(Witness excused.)

FRANK L. KEIGHTLEY,

a witness of lawful age, produced, sworn and examined, testified on behalf of the plaintiff as follows:

Direct Examination, by Mr. Eagleton.

Q. Please state your full name? A. Frank L. Keightley.

Q. How do you spell your last name? A. K-e-i-g-h-t-l-e-y.

Q. What business are you in, please? A. Coal and coal hauling.

Q. Where is your place of business? A. 1616 S. 39th.

Q. Did you on occasions haul coal to and from the Anheuser-Busch Brewery? A. We do.

Q. On April 18, 1952, were you on one of the coal trucks endeavoring to deliver coal to the Anheuser-Busch Brewery along with a driver named Adkins that morning when you were stopped and your movement prohibited by the defendant's pickets? A. Yes, I was.

Q. Will you tell us what direction you were headed? A. I was headed south off of Pestalozzi, coming into the coal dock.

Q. You were coming south on Seventh Street and crossing Pestalozzi, and you come in at an angle at the southwest? A. Yes.

Q. What did the pickets do to prohibit your movement at that time? A. They were bunched rather heavy in front of our truck.

Q. How close? A. I couldn't say, sitting in the cab, but they were very close.

Q. Ten or twelve inches? A. Closer than that.

Q. Did they prohibit the movement of your truck at that time? A. Yes.

Mr. Eagleton: That's all.

Cross-Examination, by Mr. Roessel.

Q. You did deliver coal there? A. We have, yes.

Q. You did on that morning. You went right on through the picket lines regardless? A. Subsequently, yes.

Q. So that when you came there the driver of your truck, finding these men blocking his path, decided he didn't want to observe a picket line, is that right? A. What is that question again?

Q. Your driver, at the time he came there and saw these pickets, decided he didn't want to observe that picket line and he went through it and did go through later? A. He went through later.

Q. How much later? A. I don't know, possibly an hour.

Q. Did those pickets make any threats, or was any violence used, or was there any rough stuff there? A. No, sir.

Q. They were there, you saw them, and you decided in spite of the pickets you were going through and you went back and went through? A. Yes.

Mr. Roessel: That's all.

Redirect Examination, by Mr. Eagleton.

Q. Did they make an effort, when you went back and went through, to 'unch up on you again? A. No. They separated. They wasn't on me.

The Court: Where was this coal being delivered?

Mr. Eagleton: To Busch Brewery. You were going south on Seventh, going into the loading dock?

The Witness: Yes.

(Witness excused.)

Thereupon the Court announced a short recess, after which Court convened and the following further proceedings were had, to-wit:

WALTER HENRY RUTLEDGE,

a witness of lawful age, produced, sworn and examined testified on behalf of the plaintiff as follows:

Direct Examination by Mr. Eagleton.

Q. Please state your full name? A. Walter Henry Rutledge.

Q. How old a man are you? A. Thirty-seven.

Q. How do you spell your last name? A. R-u-t-l-e-d-g-

Q. Where do you live? A. Veterans Housing, at Jefferson Barracks.

Q. Mr. Rutledge, what is your present business, or occupation? A. Millwright.

Q. How long have you been a millwright? A. I started out in the Seabees, in 1944.

Q. You have been a millwright ever since? A. Yes.

Q. Were you one of the millwrights, among a number of them, that was employed by the Fruin-Colnon Construction Company in June, 1949, around the 15th, in connection with the building of a mill feed storage plant for Anheuser Busch, Inc.? A. At that time I was a carpenter.

Q. And the millwrights, when we speak of millwright they are part of the carpenters' union, as distinguished from machinists? A. Yes.

Q. How long had you been on that job? A. I think I been there about four or five months.

Q. Your employer was Fruin-Colnon? A. Yes.

Q. You had no employment at that time with Anheuser Busch, Inc.? A. No, sir.

Q. Nor never had at any time? A. No.

Q. That's the feed house that was being constructed there and it was under construction at least four or five months prior to June, 1949, when this episode occurred? A. Yes.

Q. Will you tell us what occurred at that time with reference to the machinists of the defendants coming in

that particular job, what they did and what was done? A. I was assistant steward, this buddy of mine, he was home sick that day, and I was assistant steward——

Q. For the millwrights? A. For the carpenters and millwrights. My foreman came up and said, "You better see what's going on. Some fellows have a block and tackle and are starting to pick up some of the conveyor machines." There was five or six of them and I asked them who gave them orders to start working on that and they said they had their orders from somebody, I don't know who it was, the foreman of the machinists, in fact that's what he stated. I went and called up our carpenters' office, and they said they didn't have any right putting any machinery in there——

Q. You mean the machinists didn't have any right putting any machinery in there? A. Yes. I said, "You fellows have no right to do this work on the job." They got pretty belligerent about it. They said as far as they were concerned millwrights didn't even exist. Foreman Bush of the machinists he came down, our steward was there, some other fellow came down, there was a long rigmarole, and the Superintendent said, "Fire all the carpenters. Get them off the job". The next morning we got off the job.

Q. How many carpenters were there? A. At that time the laborers were on a strike. There were eight or ten carpenters.

Q. You never went back? A. No.

Q. You lost your job, as far as that particular employment is concerned? A. Yes.

Mr. Eagleton: That's all.

Cross-Examination, by Mr. Roessel.

Q. Mr. Rutledge, when was this incident you just related here? A. You mean what time of the day?

Q. No. What month of the year?

Mr. Eagleton: June, 1949.

The Witness: June, 1949.

Q. (By Mr. Roessel) June, 1949? A. Yes.

Q. Who were you employed by? A. Fruin-Colnon.

Q. Fruin-Colnon Construction Company, as a carpenter? A. Carpenter and millwright.

Q. You were employed by Fruin-Colnon? A. Yes.

Q. There was some installation of machinery? A. Yes.

Q. And the machinists union were doing the work? A. They weren't doing the work while we were there.

Q. They attempted to do the work? A. Yes.

Q. You raised a question as to their right to do that work? A. I didn't raise the question about it. I just said they weren't allowed to do it, and weren't going to do it. That's what a steward is on the job for.

Q. Were these machinists employees of Fruin-Colnon? A. No.

Q. They were employees of Anheuser-Busch? A. Yes.

Q. Do you know who assigned that work? A. They said their foreman, I guess Bush.

Q. In response to that direction they were doing this work? A. They were attempting to do it.

Q. What I mean is: In response to a direction from their employer they were there to do that work and you questioned their right to do that work? A. Yes, sir.

Q. You were told then by the company subsequently—what was it you were told? A. You mean about us getting fired?

Q. That's right. A. This one fellow told Floyd Emmert to fire all the carpenters, he didn't want them on the job.

Q. Do you know who that man was? A. No.

Q. Someone told the foreman for Fruin-Colnon—— A. The Superintendent for Fruin-Colnon.

Q. ——to get these men off the job? A. Yes.

Q. You don't know who that was?

Mr. Eagleton: Somebody from Busch's.

Q. (By Mr. Roessel) As a result of that, the following day, or the next day or so, you were told all of you were

fired, is that right? A. We got off the job the next morning, yes.

Q. Do you know, Mr. Rutledge, that that particular work, which was being done at that time, was specifically reserved, taken out of the contract with the Fruin-Colnon Construction Company?

Mr. Eagleton: This man would not know that of his own knowledge.

The Witness: No, sir. I heard that, but I don't know for sure.

Mr. Eagleton: I object to what he heard.

The Court: Yes.

Mr. Eagleton: He said he heard it but he did not know of his own knowledge, and I move his answer be stricken.

The Court: Yes. It will be stricken.

Q. (By Mr. Roessel) It was your understanding, from what you had heard and so forth——

Mr. Eagleton: You are only taking up time. You are not cross-examining.

Mr. Roessel: All right. That's all. Step down.

(Witness excused.)

Mr. Eagleton: I want to offer in evidence Plaintiff's Exhibits A to G, inclusive. I think they have been formally offered. And with that the plaintiff rests.

The Court: They will be received in evidence.

And this was all of the evidence that the plaintiff offered in chief to sustain the issues in its behalf.

DEFENDANT'S EVIDENCE.

Thereupon the defendants, to sustain the issues in their behalf, offered and introduced the following evidence:

Mr. Roessel: At this time, and pursuant to our agreement, I want to offer in evidence the affidavit of Russell Davis.

The Court: Do you want to mark this?

Mr. Roessel: Yes. Mark this as Defendant's Exhibit 1.

(Document marked for identification as Defendant's Exhibit 1, by reporter, as requested.)

Mr. Roessel: I want to offer in evidence, pursuant to stipulation and understanding, Defendant's Exhibit 1.

Mr. Eagleton: If the Court please, your Honor will understand that this is an affidavit setting forth the proposed testimony of witness Russell Davis, subject to objections which may be made the same as if he were on the stand as to competency, materiality and everything else. I think there are a number of matters in here which are hearsay and conclusions, which this person would not have knowledge of, and I'll object to those portions as we go along.

On page 2 this statement appears, and I think it is objectionable as being a conclusion, beyond the witness's knowledge, and the last part of it is certainly objectionable with reference to there being an inference drawn and a conclusion drawn, when the contract would speak for itself, and it is also argumentative in nature, and certainly no witness on the stand would be permitted to give testimony of this character. I read from page 2, "The plaintiff and the Union have no misunderstanding or controversy over the work to be performed by the Union and have never had any such controversy. The 'recognition' clause of all the contracts show this."

No witness could get on the witness stand and say that such is the fact and the recognition clause demonstrates the truth of his testimony. I object to that portion. It is based on a conclusion, particularly the sentence that reads, "The 'recognition' clause of all the contracts show this."

Mr. Roessel: That's in evidence. He is referring to a matter in evidence that shows that the clause says that.

The Court: Don't you think the first part is? If they

don't have any misunderstanding I don't know why we are here working. You claim the contract is in evidence?

Mr. Roessel: Yes.

Mr. Eagleton: It was in the stipulation.

The Court: If it is in evidence it speaks for itself, doesn't it?

Mr. Roessel: That's O. K.

Mr. Eagleton: I move that portion be stricken and not be admitted.

The Court: I'll sustain that objection.

Mr. Eagleton: At the bottom of that same page, the last sentence reads this way: "This is for the legitimate protection of the Union and also for the employees of plaintiff." I have no objection to that except to the word "legitimate".

Mr. Roessel: That may be stricken.

Mr. Eagleton: That is on page 2, the second line from the bottom, your Honor.

Then on page 3, the second paragraph starts this way: the objectionable matter is after the first sentence. "The Union felt compelled to do all in its power to protect itself and to avoid such results." To that sentence I have no objection. That is a statement of their intention.

The next sentence, that follows, I do object to. "The plaintiff recognized the fairness and soundness of the Union's intention and desiring to effectuate the long established custom and practice of the parties agreed in 1948 to the inclusion in Art. VII of an additional paragraph as appears in such contract." That certainly is objectionable, because not only does it say the plaintiff recognized something which the witness wouldn't know, and which is definitely a conclusion, but secondly it is irrelevant and immaterial. I move that it be deleted as being based on a conclusion, and being irrelevant and immaterial, and incompetent for that reason.

The Court: From the words "The plaintiff" down to the end, "contract of 1949"?

Mr. Eagleton: I don't have any objection to that last sentence. "This paragraph was retained in the contract of 1949."

The Court: It isn't of any value?

Mr. Eagleton: No particular value.

The Court: I'll sustain that objection.

Mr. Eagleton: At the top of page 4, your Honor, the very nature of the sentence and the paragraph, which I am about to object to, shows, on its face, it is based on hearsay. It's incompetent, because it's based on the information and belief of the affiant. The witness must have personal knowledge thereof. "On the information and belief of the affiant the plaintiff was supposed to have then advised the carpenters that the plaintiff would not renew any contract with the instant Union which would contain a clause such as Art. VII. However, when the time for renewal of the Union's contract occurred in 1951, Art. VII was retained and the instant paragraph 2 added. No substantial change was made in Art VII." I object to that, it's hearsay.

The Court: You agree it's hearsay?

Mr. Roessel: No.

The Court: It says, "On the information and belief of the affiant the plaintiff was supposed to have then advised the carpenters," and so forth.

Mr. Roessel: If he was testifying on the stand he could state, "It is my information the company advised the carpenters the company would not renew such a contract." Would you admit it?

Mr. Eagleton: No. You can't admit it. When you are admitting testimony by way of affidavit it has to be competent testimony, and it cannot be based on information and belief.

Mr. Roessel: Do you admit the fact, and you're the ones that know, that you did advise the carpenters this contract would not be renewed?

Mr. Eagleton: That is contained in Mr. Upshaw's affidavit, in the last paragraph of it it says the carpenters were informed we would not reinsert that clause, but the information was given in March of 1951.

The Court: I'll sustain the objection.

Mr. Eagleton: Then the very next paragraph, your Honor, page 4, beginning with the words, "To this end, Mr. Richard Upshaw, General Manager of the plaintiff, and Dwight Ingamills, plaintiff's attorney, met with the top officers of the Union in Washington, D. C. The paragraph was then re-written," and so forth. That likewise is based on information and belief, and the witness doesn't indicate any personal knowledge of it and he couldn't have had because he wasn't there and doesn't claim to have been there, and anything he claims that was done by the top officers, or regional officers, could not have any bearing on this case. I move the whole paragraph be stricken.

Mr. Roessel: There is nothing there that indicates he didn't know the paragraph was rewritten and then submitted to the N. L. R. B., who gave a legal opinion. That's within his personal knowledge

Mr. Eagleton: He doesn't say it's of his own personal knowledge.

The Court: It's all tied in together.

Mr. Roessel: No.

Mr. Eagleton: I have no objection to putting in only the first sentence, about that instant clause, if you want that in.

Mr. Roessel: Let's take the second sentence, the witness says——

Mr. Eagleton: The first sentence covers the whole thing.

Mr. Roessel: Well, that's right.

Mr. Eagleton: Strike out starting with the words, "The plaintiff and the Union were desirous of being fair," down to "paragraph was legal." You can leave in, "It was then included in the contract dated January 5, 1951." The word "then" gives a different meaning.

The Court: We will strike it all out.

Mr. Roessel: Why, no. We object to that. It's competent testimony. These things should be left in, because that's a subject for determination.

Mr. Eagleton: It's included in the stipulation of facts. In the stipulation of facts before this Court there is a statement to the effect this particular clause was in the 1951 contract. There isn't any further comment needed.

Mr. Roessel: Except the witness has a right to show he knows that Mr. Ingamells met with the top officers and this paragraph was then rewritten and submitted to the national officials of the N. L. R. B.

Mr. Eagleton: He doesn't state that.

The Court: I don't see what difference it makes.

Mr. Roessel: It makes a lot of difference.

The Court: The contract is in evidence and speaks for itself.

Mr. Eagleton: I move that portion be stricken out.

The Court: All right.

Mr. Roessel: What are you going to strike out?

The Court: From the words "The plaintiff" on down the balance of the paragraph.

Mr. Eagleton: Going over to page 5, down about the middle, if your Honor please, just by way of getting to it, "The Union refused to delete this paragraph." I have no objection to that. "Because of the positive position of the plaintiff and the Union the U. S. Conciliation Service was called in." I have no objection to that. "At subsequent conferences some few matters were discussed and"— then, beginning here, "it is affiant's belief that the changes set out in the Union's list could possibly be worked out, if the plaintiff would fully and fairly bargain with the Union. But the plaintiff refused to do this unless the Union would delete the paragraph in question." I move that portion of the paragraph, beginning with the words "it is affiant's belief" and going down to the word "deadlocked", be stricken, because it is definitely based on hearsay and is incompetent.

Mr. Roessel: I don't think that should cover the portion that it was apparent from the facts the parties were deadlocked. He was there. He is chief negotiator for the Union. That's competent. He is competent to testify, in his opinion, under the facts they were deadlocked.

Mr. Eagleton: His opinion is based on something incompetent.

The Court: He participated in the conference?

Mr. Eagleton: Yes.

The Court: Let's leave that in.

Mr. Eagleton: Leave that statement in, "It was apparent to affiant that the parties were deadlocked." Strike out the rest of it from "it is affiant's belief" to the word "question". Is that right?

The Court: Yes.

Mr. Eagleton: Going down further, in the same paragraph, "On April 6, 1952 the Union by a vote of 206 to 14 decided to strike and on April 7, 1952 did go on strike and placed pickets about the premises of the plaintiff." Leave that in. I think that's all right. I was going to object, on the ground the number who voted for or against the thing would not be material to any issue in this cause, but I don't see how it makes any difference either way. "The said picketing at all times was lawful, and was peaceful and orderly and at no time was there any violence of any character or nature." I object to that, because there is nothing in the affidavit to show the witness knows anything about picketing, or anything else.

Mr. Roessel: Here's the man that's been in charge of the picketing. Here's the man that carried on negotiations. Here's the Assistant Business Representative of the Union.

Mr. Eagleton: I'll waive my objection. Let it go in. Going to the next page, 6, in the first new paragraph, "It is clear that plaintiff seeks to create an undue, and in affiant's opinion, an unfair, inference as to this so-called jurisdictional matter." That's a gratuitous opinion, and should come out.

Mr. Roessel: All right.

The Court: Sustained.

Mr. Eagleton: The next sentence, "Affiant repeats that for years the plaintiff has without question recognized that the work indicated in the 'recognition' clause of all the contracts was to be performed by the Union." I'm not going to make any objection to it, standing alone. "This was re-iterated in the certification of the Union by the N. L. R. B. in 1949 and was carried forward in the succeeding contracts." I'm objecting to that, certainly——

Mr. Roessel: Let's take out the word "re-iterated"?

Mr. Eagleton: All right.

The Court: That would merely say "This was in the certification" and so on?

Mr. Roessel: Yes.

The Court: O. K.

Mr. Eagleton: That is his testimony?

Mr. Roessel: Yes.

Mr. Eagleton: I move to take out the whole sentence.

The Court: I thought you meant just the word "re-iterated"?

Mr. Eagleton: No. The whole sentence.

The Court: Very well. Defendant's Exhibit 1, with the various objections sastained, will be received in evidence.

Said Exhibit 1, offered on behalf of defendants, received in evidence and made a part of this transcript, is, in words and figures, as follows, to-wit (caption and signatures omitted):

DEFENDANTS' EXHIBIT 1.

STIPULATION.

It is hereby stipulated and agreed by and between the parties that the affidavit of Russell Davis attached hereto may be introduced in evidence in lieu of his testimony with reference to the matters and things contained and

set forth in said affidavit, subject to appropriate and proper objection being made to any part thereof with reference to the materiality or relevancy or competency of said matters. It is understood and agreed between the parties that by thus permitting said affidavit or any part thereof to be introduced in evidence the plaintiff does not admit the truth of the matters contained in said affidavit but is simply agreeing that if said Russell Davis were present he would so testify, and therefore the plaintiff shall be permitted to offer in evidence any other testimony it may so desire in contradiction of said affidavit or in rebuttal thereto or in explanation thereof.

AFFIDAVIT.

Russell Davis, first being sworn on his oath, states:

That he is and for 15 years has been Assistant Business Representative of the International Association of Machinists, District Council No. 9; that as such representative he has conducted negotiations with plaintiff for and on behalf of the Union for a period of 14 years and did conduct the negotiations involving the instant contract. That he is familiar with the background of the negotiations and the surrounding circumstances. That all times it has been the single object and intention of the Union to secure the best wages and working conditions possible for its members and likewise to protect the work allotment given the Union under their certification by the N. L. R. B. in 1948. This certification was subsequent to the enactment of the T-H law and was consistent with the long established understanding with the plaintiff. To this end the plaintiff and the Union have fully cooperated.

For over a quarter of a century the plaintiff and the Union have had contractual relationships and during all this time the contracts have all recognized the work to be performed by the machinists and insofar as their content

and intent is concerned, they have all been in accordance with the purpose heretofore stated. The pertinent clauses in such contracts over a period of years are hereto attached for comparison.

The agreements between plaintiff and the Union have consistently been that the recognized work of the Union was to be performed by machinists, employees of the plaintiff, on the premises of the plaintiff and that if this work was to be contracted out and to be performed within the plaintiff's plant or premises, that such work was recognized as coming within the recognition of the Union and was to be performed by members of the Union.

Comparable clauses to the instant Art. VII show this. The Union is desirous of maintaining this status and of having its traditional work assured it. This can be done by the plaintiff reserving such work to be done by its employees on its premises as it has in the past or if such work is contracted out; then and there only the Union desires assurance that the plaintiff will select contractors who likewise recognize the same provision. This is for the protection of the Union and also for the employees of plaintiff.

About 1948 the Union realized that by virtue of changing conditions and practices the long recognized jurisdiction of the Union might be affected or completely destroyed by the plaintiff contracting out part or all of such work. The Union was familiar with such practice as the "run away shop" where an entire plant was completely moved to another location in order to destroy the recognized work of a Union and to avoid contracts.

The Union felt compelled to do all in its power to protect itself and to avoid such results.

Affiant states that there has been a difference of opinion existing between the carpenters and the machinists which

the plaintiff terms a jurisdictional dispute. There has been no strike or work stoppage by the Union over this subject, however, that in 1950 the plaintiff let a contract for a new building. The plaintiff specifically reserved from such contract all machinery, etc., installation which work was to be done by its own employees. To the best information and belief of affiant such reservation was made known to the contractor. That when said building was nearly completed the work in question was assigned to the plaintiff's employees, members of the Union under this reservation; the carpenters then walked off the job but no picketing was indulged in. Unfair labor practice charges were filed by the carpenters with the N. L. R. B., but these charges were later withdrawn.

The instant clause—that is the second paragraph of Article VII was prepared after collaboration with the plaintiff and the N. L. R. B.

Affiant states that plaintiff's plant has never been closed to his knowledge for fourteen years as a result of any so-called jurisdictional dispute between the carpenters and the Union.

The contract dated January 5, 1951, expired December 31, 1951, and was terminated by the Union by notice on October 29, 1951, which notice was given pursuant to the provisions of the said contract. At this time a list of proposed changes desired by the Union was given plaintiff. A copy of such proposed changes is attached hereto. No reference to Art. VII was made. The plaintiff and the Union first met in negotiations on December 19, 1951.

The Union went over the items of the proposed changes and requested that the plaintiff furnish certain pay roll information showing the base rate for the pay roll ending January 15, 1950. At this conference the plaintiff for the first time brought up the matter of the elimination of the

second paragraph of Art. VII, stating its position to be that unless and until this paragraph was deleted it was useless to consider other matters. Mr. Upshaw, plaintiff's General Manager, stated "that the building trades had put the heat on us." The Union refused to delete this paragraph. Because of the positive position of the plaintiff and the Union the U. S. Conciliation Service was called in. At subsequent conferences some few matters were discussed and * * *. It was apparent to affiant that the parties were deadlocked. It was then, the plaintiff still having failed to furnish the pay roll information requested, that on March 24, 1952, the Union filed unfair labor practice charges with the N. L. R. B. against the plaintiff, copy is herewith attached, which charges are now pending and in the process of investigation by the N. L. R. B. On April 6, 1952, the Union by a vote of 206 to 14 decided to strike and on April 7, 1952, did go on strike and placed pickets about the premises of the plaintiff. The said picketing at all times was lawful, and was peaceful and orderly and at no time was there any violence of any character or nature. On April 8, 1952, the plaintiff filed unfair labor practice charges with the N. L. R. B. vs. the Union. Copy is hereto attached. Complaint thereon has been issued by the N. L. R. B. and said charges are set for hearing at 10:00 a. m. on June 30, 1952, before the N. L. R. B., 14th Region, at St. Louis, Missouri.

Affiant repeats that for years the plaintiff has without question recognized that the work indicated in the "recognition" clause of all the contracts was to be performed by the Union. The Union has never denied plaintiff the right to construct new buildings nor has it ever insisted that contracts for such work be awarded to any specific contractor, nor that paragraph 2 of Art. VII shall be required to be inserted in any contract with any other party. The Union has never stated, nor intended to give the impression that its position in protecting the work per-

formed by the employees of plaintiff called for in its certification issued by the N. L. R. B. in 1948 was specious or was being employed as a scheme or a method of strategy. Affiant further states that the dispute of the Union is solely and only with plaintiff. That the same clause, namely the second paragraph of Art. VII, presently appears in the contract of the Union with the Griesedieck Bros. Brewery Company and that it is true that there was a picket line placed at such plant by the carpenters but that said picket line was, in fact, withdrawn, after a few days.

Affiant further states that the instant strike by the Union and the placing of pickets by it was solely and only because of the plaintiff's refu ' 'o bargain in good faith.

(Signed) Rus. ell L. Davis,
Russell Davis.

Subscribed and sworn to before me this 23rd day of June, 1952.

My term expires 9/18/55.

(Signed) Robt. A. Roessel,
(Seal) Notary Public.

Mr. Roessel: That is the defendants' case, your Honor.

The above and foregoing was all of the evidence adduced on the trial of this cause on the merits at the times mentioned therein.

Thereupon the Court, having heard all of the evidence offered and introduced, took this cause as submitted.

PERMANENT INJUNCTION GRANTED.

Thereupon on September 30, 1952, the Court, by its order duly made and entered of record, entered its decree herein, in words and figures, as follows, to-wit:

(Caption omitted.)

DECREE.

This cause heretofore, or to-wit: the 26th day of June, 1952, having come on for hearing upon an order to show cause why a temporary injunction should not be granted; and the parties then having duly appeared by counsel and having stipulated that the hearing on said order to show cause should be taken and considered as the hearing on both such order to show cause and the merits of the cause, and that the evidence adduced upon such hearing on said order to show cause should be taken and considered in all respects as the evidence and the proceedings on the merits, and that this cause should be taken as submitted on the merits upon such evidence; and the Court having taken and heard the evidence at said hearing on the 26th and 27th days of June, 1952, and on said last mentioned date having taken this cause as submitted upon the plaintiff's petition as amended by interlineation, the defendants' answer thereto, the evidence and proof adduced at said hearing, and the stipulations of the parties; and the Court having heard the arguments of counsel for the parties, and having read and considered the briefs filed by counsel for the parties; and the Court having duly heard, read and considered the pleadings, the evidence, the stipulations of the parties, and the arguments and briefs of counsel, and now on this date being sufficiently advised of and concerning the premises, doth find that plaintiff is entitled to the relief prayed for in its

petition and doth find in favor of the plaintiff and against the defendants herein.

And the Court doth find as follows:

I.

Plaintiff is a producer of beer, yeast and food products at its plant situated in the vicinity of 721 Pestalozzi Street, St. Louis, Missouri. For this production plaintiff uses grains and other raw materials which are shipped into Missouri on common carriers by rail and truck, and are delivered to plaintiff by common carrier and private carrier. Plaintiff's products are shipped to its customers within and without Missouri by common carrier, private carrier and in plaintiff's own vehicles. Plaintiff also stores beer in public warehouses, independently owned, in St. Louis and elsewhere, from which shipments are made to its customers.

II.

Plaintiff's manufacturing processes are of a continuous nature and are interrelated, so that the involuntary stoppage of any part or all of the processes automatically results in progressive spoilage of partially processed grains, yeast and malt, causing extensive damage to plaintiff.

III.

Defendant Lloyd Weber is the business representative, and the defendant Russell L. Davis is the Business Agent of the International Association of Machinists, District No. 9. Defendants Walter Patrick, Thomas Blake, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer and Thomas Mulvaney are members of the negotiating committee of said District No. 9. Membership in said unincorporated labor organization is so numerous that it is impractical to name all members

thereof as defendants herein. The defendants named, however, are sufficient to assure adequate representation of the entire class of persons who are members of and known as the International Association of Machinists, District No. 9, hereinafter at times referred to as the "Machinists." A common question of law and fact exists with respect to the named defendants and the class represented by them known as District No. 9 which question arises out of the protection of the rights of plaintiff concerning which relief is herein sought.

IV.

In the operation of its plant plaintiff employs over 6,000 men, the majority of whom are engaged in producing the Company's products. The various groups of these employees are represented by different labor organizations as bargaining agents. Approximately 220 of plaintiff's employees are represented by said District No. 9 of the International Association of Machinists, whose members constitute the class of persons designated as defendants herein, generally referred to in pleadings and testimony as the "Machinists." These Machinists are steadily employed in the repair and maintenance of the Company's machinery and equipment.

V.

A regular and necessary part of the conduct of plaintiff's business involves expansion of facilities by constructing new buildings and expanding old buildings, and installing new processing, bottling, pasteurizing and other machines and equipment in the new quarters. Plaintiff has no means or facilities for doing the work just mentioned. For at least thirty years this work of constructing new buildings, expanding old bulidings, and moving, erecting and installing machinery therein has been contracted out by plaintiff to independent construction contractors,

and has not been performed by plaintiff through any regular or part time employees of plaintiff. The only exception to this practice occurred in June, 1949, when, to dispose of a controversy between defendants and Millwrights employed by the independent construction contractor, plaintiff finished the machinery installation work with its own employees, represented by the Machinists. This conduct by plaintiff resulted in a work stoppage on the construction job by the carpenters (with whom the Millwrights are affiliated).

VI.

The independent construction contractors engaged by plaintiff to do the work of moving, erecting and installing machinery in connection with the construction of new buildings and the expanding of existing buildings do such work with their own employees who are represented under collective bargaining agreements by the Millwrights' organization, an affiliate of the United Brotherhood of Carpenters. There is no independent contractor, large or small, in the St. Louis area whom plaintiff could select for this work whose employees are represented by District No. 9 of the International Association of Machinists. The employees of these independent construction contractors are not in any manner subject to the control of plaintiff and plaintiff does not have any right to hire or discharge these employees, or to direct or supervise their functions or duties, and has not at any time attempted to do so.

VII.

For at least a quarter of a century the Machinists, the Millwrights, and the independent construction contractors in and around the City of St. Louis, Missouri, have been engaged in a continuing dispute regarding the representa-

tion of the construction contractors' employees who move, erect and install machinery in old buildings which have been enlarged, and in newly constructed buildings. As between the two Unions, this dispute is what is commonly called "jurisdictional dispute." As between the Machinists and the construction contractors, the dispute is a continuing attempt by the Machinists to represent certain of the contractors' employees for purposes of collective bargaining. Anheuser-Busch, Inc., the plaintiff herein, is neutral and is not a party to either dispute. Its efforts to preserve its neutrality furnish the occasion for this suit for injunction.

VIII.

Article VII of the collective bargaining agreement between plaintiff and the Machinists relates to the jurisdiction or work covered by the agreement. Section 1 of Article VII provides:

> "**Section 1**: Jurisdiction: The Employer agrees that all turning, boring, fitting, filing, planing, shaping, babbitting, chipping, sawing and machinery repairing on gasoline, diesel and electric trucks and automobiles in the plant and the making, assembling, erecting and repairing of all machinery of all descriptions and parts thereof performed within the employer's plant by the employer shall be performed by employees within the bargaining unit as set forth in Section 1 of Article I of this agreement, either under its own supervision or such other supervision as the employer shall select."

Section 1 of Article VII has been included in each collective bargaining agreement between plaintiff and the Machinists beginning with the 1948 agreement. The parties regarded it as being declarative of the traditional relationship between plaintiff and the Machinists over the

past quarter century. Section 1 of Article VII has never been and is not now a matter of dispute between the parties.

In compliance with demands of defendants, an additional provision known as Section 2 was inserted in Article VII of the bargaining agreement for the calendar year 1951. This Section 2 of Article VII provided that:

> "In the event it becomes necessary to have such work hereinbefore described contracted out, the Employer shall let out such work to and select contractors who have with the International Association of Machinists collective bargaining agreements which contain provisions corresponding to or consistent with the aforesaid jurisdictional limitations."

In practice this provision was interpreted by the Machinists to require that in the construction of new buildings and the expanding of existing buildings, plaintiff shall deal only with independent construction contractors who agree to do the work of moving, erecting and installing machinery therein with employees who are represented by the Machinists. By this interpretation the Machinists intended to get for their members work which traditionally had been performed by members of other Unions, who were not employees of plaintiff, and which work had never been performed for plaintiff by members of the Machinists' organization except in the one instance in June, 1949, as aforesaid.

This attempt by the Machinists to obtain additional work which they had never performed for plaintiff, transcended any attempt to prevent a "runaway shop" and amounted to a deliberate attempt by defendants to expand the scope of their representation to cover employees of independent construction contractors through the exercise of coercive pressure on plaintiff.

IX.

Plaintiff was advised by its legal counsel that as interpreted by the Machinists, Section 2 of Article VII would require plaintiff to become a party with the Machinists to a common law conspiracy against the independent construction contractors and their employees, and that such a conspiracy also violated Section 416.010, R. S. Mo. 1949, the Missouri Anti-Trade Restraint Law. Plaintiff advised defendants prior to the expiration date of the 1951 bargaining agreement that it could not agree to the reinsertion of Section 2 of Article VII, as interpreted by defendants, in the bargaining agreement for the calendar year 1952.

X.

In collective bargaining prior to April 7, 1952, plaintiff and defendants reached substantial agreement with regard to all phases of the 1952 agreement except Section 2 of Article VII. Defendants made clear their intended meaning of the section that plaintiff should refuse to deal with any construction contractor unless he would agree to do the work of moving, erecting and installing the machinery in connection with the construction of new buildings and the expanding of existing buildings, with employees who were represented by District No. 9 of the International Association of Machinists as their bargaining agent.

It was defendants' announced purpose to obtain like agreements from all the other breweries in the St. Louis area, so that under pressure from all the brewers the construction contractors would be forced to deal with the defendants as bargaining representative for their employees engaged in the moving, erecting and installing of machinery, notwithstanding the fact that these employees were already represented by the Millwrights' organization. In the alternative, the construction contractors would

have to replace their present employees with members of the Machinists' organization. To aid defendants in accomplishing this end, plaintiff was directed by defendants to use influence and pressure on the construction contractors and on the other local brewers.

Under the terms sought to be imposed by defendants, individuals working for or seeking to work for independent construction contractors, moving, erecting and installing machinery at the breweries in the St. Louis area, would have to forego representation by their present bargaining representatives, the Millwrights, with whom the construction contractors already had valid collective bargaining agreements, and become affiliated with defendants' labor organization, the Machinists, in order to retain their jobs with the contractors, or their opportunities for periodic employment at such work.

Defendants obtained the insertion of a clause identical with Section 2 of Article VII in their 1952 bargaining agreement with one brewery in the St. Louis area.

XI.

The aforesaid conduct of the defendants, individually and collectively, as directed against the independent construction contractors and their employees, constituted a conspiracy in violation of the laws of the State of Missouri. If plaintiff inserted Section 2 in Article VII of the 1952 bargaining agreement, as demanded by defendants, having in mind the interpretation defendants placed thereon, and the effects defendants intended to achieve thereby, plaintiff would become a party to said unlawful conspiracy, and as such would be liable at common law to all injured parties for their damages, and under the Missouri Anti-Trade Restraint statute would be liable for the payment of treble damages and subject to criminal prosecution.

XII.

No bona fide labor dispute existed between defendants and plaintiff on April 7, 1952, but defendants prior to that date had continued to raise specious points and issues with reference to matters with which they were already actually in accord with plaintiff, in order to give the false appearance that a labor dispute existed.

XIII.

On April 7, 1952, solely to compel plaintiff to join in the aforesaid conspiracy with the Machinists against the construction contractors and their employees, defendants called a strike of Machinists at plaintiff's plant and placed a picket line around the plant.

XIV.

Defendants' picket line was so placed and maintained that it prevented the movement of railroad cars into and out of plaintiff's premises by a common carrier without danger of physical injury to the pickets, and movement of the cars was stopped for that reason. A delivery of coal by a private carrier likewise was prevented in the same manner.

XV.

The physical presence of defendants' picket line made it impossible for plaintiff to get supplies into the plant and processed materials out of the plant, and forced plaintiff to suspend operations at its plant at 721 Pestalozzi Street, St. Louis, Missouri, for a period of twelve days, during which time it suffered irreparable damages due to spoilage of partly processed grains which it could not process to completion.

XVI.

The conduct of defendants, individually and collectively, as directed against plaintiff for the purposes aforesaid, constituted a conspiracy in violation of the common law of the State of Missouri, and likewise in violation of Section 416.010, R. S. Mo. 1949.

XVII.

Plaintiff has not, and cannot have, any adequate remedy at law under the facts and circumstances hereinbefore set out, and the damage and injury to plaintiff from the maintenance by defendants of a picket line upon or about plaintiff's premises and premises used by plaintiff in the carrying on of its business, under such facts and circumstances, is irreparable and such as to require immediate protection of a court of equity.

Wherefore, It Is Ordered, Adjudged and Decreed by the Court:

1) That the defendants, Lloyd Weber, Russell L. Davis, Walter Patrick, Thomas Blake, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer, and Thomas Mulvaney, and each of them, individually and as representatives of the class of persons who are members of and known as the International Association of Machinists, District No. 9, be, and they are hereby permanently enjoined and restrained from:

(a) Conspiring, conniving and unlawfully agreeing to cause, or causing or participating in, concerted action of any nature, including strikes among employees of plaintiff, and the establishment and maintenance of pickets or picket lines at plaintiff's main plant, or elsewhere, for the purpose of forcing or requiring plaintiff to agree with the International Association of Machinists, District No. 9, that work of constructing

new buildings, expanding old buildings, and moving, erecting and installing machinery in such new buildings and expanded old buildings, let out by plaintiff to contractors of any nature or description, shall by said contractors be assigned to employees of said contractors who are members of or are represented by said International Association of Machinists, District No. 9, and from carrying on such activities for the purpose of forcing and requiring plaintiff, and those with whom it so contracts, to assign particular work to employees represented by or who are members of said International Association of Machinists, District No. 9.

(b) So proceeding or so interfering with or restricting passage on or over the various streets, roadways and railroad tracks, or any of them as to affect or interfere with the delivery of materials, goods and products to and from plaintiff's premises; or by any other conduct interfering with the delivery of materials, goods and products to and from plaintiff's premises.

(c) Picketing, setting up a picket line or lines, or maintaining a picket line or lines, on or about the premises of plaintiff; or picketing, setting up a picket line or lines, or maintaining a picket line or lines directed at or against plaintiff, on or about premises where plaintiff stores or warehouses beer and other products, or transacts business in connection therewith.

2) That the cost of this proceeding be paid by defendants, and that execution issue therefor.

Dated this 30th day of September, 1952.

(Signed) David J. Murphy,
Judge of the Circuit Court City of St. Louis, State of Missouri.

DECREE OF SEPTEMBER 30, 1952, SET ASIDE AND VACATED.

On October 3, 1952, the Court, of its own motion, set aside and vacated the decree rendered herein on September 30, 1952.

SEPARATE MOTION OF DEFENDANTS TO DISMISS FOR WANT OF JURISDICTION AND FAILURE TO STATE A CAUSE OF ACTION OVERRULED.

And on the same day, October 3, 1952, the Court, by its order duly made and entered of record, overruled the separate motion of defendants to dismiss for want of jurisdiction and failure to state a cause of action.

DECREE GRANTING PERMANENT INJUNCTION RE-ENTERED.

And on the same day, October 3, 1952, the Court refiled draft of decree filed herein on September 30, 1952, and re-entered decree granting plaintiff a permanent injunction.

MOTION OF DEFENDANTS TO MODIFY THE FINDING AND DECREE HEREIN; MOTION TO SET ASIDE THE FINDING AND DECREE HEREIN AND TO DISMISS PLAINTIFF'S COMPLAINT FOR WANT OF JURISDICTION; MOTION TO SET ASIDE THE FINDING AND DECREE HEREIN AND TO ENTER FINDING AND DECREE FOR DEFENDANTS, DISMISSING PLAINTIFF'S COMPLAINT; AND MOTION FOR A NEW TRIAL, FILED.

On October 13, 1952, the defendants filed a motion to modify the finding and decree herein; a motion to set aside the finding and decree herein and to dismiss plaintiff's complaint for want of jurisdiction; a motion to set aside

the finding and decree herein and to enter a finding and decree for defendants, dismissing plaintiff's complaint, and a motion for a new trial, in words and figures, as follows, to-wit (caption and signature of counsel omitted):

MOTION OF DEFENDANTS TO MODIFY THE FINDING AND DECREE HEREIN.

Come now the defendants herein and move this Court to modify the finding and decree entered herein on October 3, 1952, for the following reasons:

1. That there is no evidence in this case to sustain the finding and decree.

2. That the finding and decree is broader than the findings of fact in that it prohibits and enjoins defendants from negotiating other issues than those which this Court has found illegal, thereby enjoining and prohibiting these defendants from their exercise of the right of free speech as guaranteed by Article I, Section 8, of the Constitution of the State of Missouri, and the 14th Amendment of the Constitution of the United States, and enjoining and prohibiting these defendants from their right to strike and peacefully picket for any and all lawful purposes; that defendants have the legal right to peacefully picket the premises of plaintiff for any and all lawful purposes, regardless of the fact that the presence of a picket line results in interference with deliveries of merchandise to plaintiff's place of business by reason of the refusal of others to cross said picket line as guaranteed by Article I, Section 29, of the Constitution of the State of Missouri, 1945.

3. That the finding and decree of this Court, particularly as related to paragraphs 1 (b) and (c) appearing on page 11 of said Decree, deprive these defendants of rights guaranteed to them under the N. L. R. A., and L. M. R. A., of 1947.

MOTION TO SET ASIDE THE FINDING AND DECREE HEREIN AND TO DISMISS PLAINTIFF'S COMPLAINT FOR WANT OF JURISDICTION.

These defendants further move this Court to set aside the finding and judgment entered on the 3rd day of October, 1952, and to dismiss plaintiff's complaint for lack of jurisdiction for the following reasons:

1. Plaintiff's petition shows on its face that plaintiff seeks the injunctive process and relief of this Court by reason of the alleged violation by these defendants of certain provisions and sections of the National Labor Relations Act and the Labor Management Relations Act of 1947—hereinafter referred to as the N. L. R. A., and the L. M. R. A., respectively, to-wit:

> Section 8 (b), 4 A and B, as amended, and Section 303 (a) 1 and 2 of the Labor Management Relations Act of 1947, hereinafter referred to as the L. M. R. A. —all as set forth in paragraph 9 of said petition.
>
> Section 8 (b) 4 D of the N. L. R. A., and Section 303 (a) 4 of the L. M. R. A., of 1947—all as set forth in paragraph 10 of said petition.
>
> Section 8 (b) 4 A of the N. L. R. A., and Section 303 (a) 1 of the L. M. R. A., of 1947—all as set forth in paragraph 15 of said petition.

2. That exclusive jurisdiction to hear and determine the matters and things as hereinbefore set out has been preempted by the National Labor Relations Board under and by virtue of Section 10 (a) of the N. L. R. A., and that specific remedy is provided for by Section 10 (k) and (l) of said Act; that remedy for violation of Section 303 (a) of the L. M. R. A., is provided for in Section 303 (b) of the said Act and none other.

3. That by reason of the foregoing this Court is wholly and totally lacking in jurisdiction to hear and determine any and all matters as set forth in plaintiff's petition.

4. That plaintiff has failed to state a cause of action in law or in equity under the statutes or the common law of the State of Missouri, and therefore is not entitled to any relief by this Court.

MOTION TO SET ASIDE THE FINDING AND DECREE HEREIN AND TO ENTER FINDING AND DECREE FOR DEFENDANTS, DISMISSING PLAINTIFF'S COMPLAINT.

These defendants move the Court to set aside the finding and decree herein, entered on the 3rd day of October, 1952, and to enter finding and decree for defendants and dismissing plaintiff's complaint for the following reasons:

1. That the judgment and finding and decree of the Court is against the evidence and the weight of the evidence;

2. The finding and decree is against the law;

3. The finding and decree is against the law and the evidence;

4. That there is no evidence to sustain the finding and decree;

5. That the Court has no jurisdiction to hear and determine this cause;

6. Under the law and the evidence the finding and decree of this Court should be in favor of the defendants and against the plaintiff, and plaintiff's petition should be dismissed.

MOTION FOR A NEW TRIAL.

Come now these defendants and move the Court to set aside the finding and decree entered in this case on the 3rd day of October, 1952, and to grant these defendants a new trial for the following reasons:

1. That the judgment and decree of the Court is against the weight of the evidence.

2. That the judgment and decree is against the law and the evidence.

3. That there is no evidence in this cause to sustain the judgment.

4. That under the law and the evidence plaintiff is not entitled to the extraordinary right of an injunction.

5. That the Court's finding that the cause of the damage inflicted on plaintiff herein was the result of a "jurisdictional dispute" divested this Court of its jurisdiction to hear and determine the cause for the reason that Section 8 (b) 4, and more particularly Section 8 (b) 4 D, of the N. L. R. A., Title 29, Section 185, Federal Code, grants jurisdiction to hear and determine such cases only to the National Labor Relations Board under Section 10 (1) and more particularly Section 10 (k).

6. That this Court lacks jurisdiction because the Congress has taken over the field of Labor Relations in cases of this type by virtue of the N. L. R. A., and gives the Board the exclusive right to hear and determine all matters and facts under Section 10 (a) of said Act.

7. That even if this Court has jurisdiction, the most that it may have is concurrent jurisdiction, and this Court is bound to follow the federal law, which this Court refused to do.

8. That even if this Court has jurisdiction, still Missouri Common law does not give the right of injunction to a party because of a "jurisdictional dispute".

9. That this Court can grant no injunction by reason of a jurisdictional dispute because there is no Missouri common law nor Missouri statute which declares such conduct to be against the law or against the public interest.

10. That the granting of this injunction brands defendants as being criminals for which they have not had the benefit of a jury trial as guaranteed under Article I, Section 22 (a), of the Missouri Constitution, 1945, and the due process clause of the 14th Amendment of the Constitution of the United States.

11. That there was no substantial evidence to prove beyond a reasonable doubt that defendants had in fact disobeyed a criminal statute.

12. That the granting of this injunction deprives these defendants of their right of free speech as guaranteed under Article I, Section 8, of the Missouri Constitution, 1945, and the due process clause of the 14th Amendment of the Constitution of the United States.

13. That Section 1 (b) and (c) of the Order and Decree are so broad that in effect they deny defendants the right to effectively negotiate a contract with plaintiff on other grounds than the one enjoined, thus denying defendants their rights as guaranteed under the N. L. R. A., Section 7 of the Act as amended, and the L. M. R. A., of 1947, and also defendants' Constitutional rights under Article I, Section 29, of the Missouri Constitution, 1945.

FOUR MOTIONS OF DEFENDANTS OVERRULED.

On November 17, 1952, the Court filed the following memorandum herein (caption omitted):

Defendants' motion to modify finding and decree overruled.

Defendants' motion to set aside the finding and decree and to dismiss plaintiff's complaint for want of jurisdiction overruled.

Defendants' motion to set aside the finding and decree and to enter finding and decree for defendants, dismissing plaintiff's complaint, overruled.

Defendants' motion for new trial overruled.

(Signed) David J. Murphy,
Judge of the Circuit Court,
Division No. 2.

JUDGMENT APPEALED FROM.

The finding and decree entered by the Court on October 3, 1952, and from which the defendants appeal, is, in words and figures, as follows (caption omitted):

This cause heretofore, on, to-wit, the 26th day of June, 1952, having come on for hearing upon an order to show cause why a temporary injunction should not be granted; and the parties then having duly appeared by counsel and having stipulated that the hearing on said order to show cause should be taken and considered as the hearing on both such order to show cause and the merits of the cause, and that the evidence adduced upon such hearing on said order to show cause should be taken and considered in all respects as the evidence and the proceedings on the merits, and that this cause should be taken as submitted on the merits upon such evidence; and the Court having taken

and heard the evidence at said hearing on the 26th and 27th days of June, 1952, and on said last mentioned date having taken this cause as submitted upon the plaintiff's petition as amended by interlineation, the defendants answer thereto, the evidence and proof adduced at said hearing, and the stipulations of the parties; and the Court having heard the arguments of counsel for the parties, and having read and considered the briefs filed by counsel for the parties; and the Court having duly heard, read and considered the pleadings, the evidence, the stipulations of the parties, and the arguments and briefs of counsel, and now on this date being sufficiently advised of and concerning the premises, doth find that plaintiff is entitled to the relief prayed for in its petition and doth find in favor of the plaintiff and against the defendants herein.

And the Court doth find as follows:

I.

Plaintiff is a producer of beer, yeast and food products at its plant situated in the vicinity of 721 Pestalozzi Street, St. Louis, Missouri. For this production plaintiff uses grains and raw materials which are shipped into Missouri on common carriers by rail and truck, and are delivered to plaintiff by common carrier and private carrier. Plaintiff's products are shipped to its customers within and without Missouri by common carrier, private carrier and in plaintiff's own vehicles. Plaintiff also stores beer in public warehouses, independently owned, in St. Louis and elsewhere, from which shipments are made to its customers.

II.

Plaintiff's manufacturing processes are of a continuous nature and are interrelated, so that the involuntary stoppage of any part or all of the processes automatically results in progressive spoilage of partially processed grains, yeast and malt, causing extensive damage to plaintiff.

III.

Defendant Lloyd Weber is the business representative and the defendant Russell L. Davis is the Business Agent of the International Association of Machinists, District No. 9. Defendants Walter Patrick, Thomas Blake, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer, and Thomas Mulvaney are members of the negotiating committee of said District No. 9. Membership in said unincorporated labor organization is so numerous that it is impractical to name all members thereof as defendants herein. The defendants named, however, are sufficient to assure adequate representation of the entire class of persons who are members of and known as the International Association of Machinists, District No. 9, hereinafter at times referred to as the "Machinists." A common question of law and fact exists with respect to the named defendants and the class represented by them known as District No. 9 which question arises out of the protection of the rights of plaintiff concerning which relief is herein sought.

IV.

In the operation of its plant plaintiff employs over 6,000 men, the majority of whom are engaged in producing the Company's products. The various groups of these employees are represented by different labor organizations as bargaining agents. Approximately 220 of plaintiff's employees are represented by said District No. 9 of the International Association of Machinists, whose members constitute the class of persons designated as defendants herein, generally referred to in pleadings and testimony as the "Machinists." These Machinists are steadily employed in the repair and maintenance of the Company's machinery and equipment.

V.

A regular and necessary part of the conduct of plaintiff's business involves expansion of facilities by constructing new buildings and expanding old buildings, and installing new processing, bottling, pasteurizing and other machines and equipment in the new quarters. Plaintiff has no means or facilities for doing the work just mentioned. For at least thirty years this work of constructing new buildings, expanding old buildings, and moving, erecting and installing machinery therein has been contracted out by plaintiff to independent construction contractors, and has not been performed by plaintiff through any regular or part time employees of plaintiff. The only exception to this practice occurred in June, 1949, when, to dispose of a controversy between defendants and Millwrights employed by the independent construction contractor, plaintiff finished the machinery installation work with its own employees, represented by the Machinists. This conduct by plaintiff resulted in a work stoppage on the construction job by the Carpenters (with whom the Millwrights are affiliated).

VI.

The independent construction contractors engaged by plaintiff to do the work of moving, erecting and installing machinery in connection with the construction of new buildings and the expanding of existing buildings do such work with their own employees who are represented under collective bargaining agreements by the Millwrights' organization, an affiliate of the United Brotherhood of Carpenters. There is no independent contractor, large or small, in the St. Louis area whom plaintiff could select for this work whose employees are represented by District No. 9 of the International Association of Machinists. The employees of these independent construction contractors are not in any manner subject to the control of plaintiff

and plaintiff does not have any right to hire or discharge these employees, or to direct or supervise their functions or duties, and has not at any time attempted to do so.

VII.

For at least a quarter of a century the Machinists, the Millwrights, and the independent construction contractors in and around the City of St. Louis, Missouri, have been engaged in a continuing dispute regarding the representation of the construction contractors' employees who move, erect and install machinery in old buildings which have been enlarged, and in newly constructed buildings. As between the two Unions, this dispute is what is commonly called "jurisdictional dispute." As between the Machinists and the construction contractors, the dispute is a continuing attempt by the Machinists to represent certain of the contractors' employees for purposes of collective bargaining. Anheuser-Busch, Inc., the plaintiff herein, is neutral and is not a party to either dispute. Its efforts to preserve its neutrality furnish the occasion of this suit for injunction.

VIII.

Article VII of the collective bargaining agreement between plaintiff and the Machinists relates to the jurisdiction or work covered by the agreement. Section 1 of Article VII provides:

> "**Section 1**: Jurisdiction: The Employer agrees that all turning, boring, fitting, filing, planing, shaping, babbitting, chipping, sawing, and machinery repairing on gasoline, diesel and electric trucks and automobiles in the plant and the making, assembling, erecting and repairing of all machinery of all descriptions and parts thereof performed within the employer's plant by the employer shall be performed

> by employees within the baragining unit as set forth in Section 1 of Article I of this agreement, either under its own supervision or such other supervision as the employer shall select."

Section 1 of Article VII has been included in each collective bargaining agreement between plaintiff and the Machinists beginning with the 1948 agreement. The parties regarded it as being declarative of the traditional relationship between plaintiff and the Machinists over the past quarter century. Section 1 of Article VII has never been and is not now a matter of dispute between the parties.

In compliance with demands of defendants, an additional provision known as Section 2 was inserted in Article VII of the bargaining agreement for the calendar year 1951. This Section 2 of Article VII provided that:

> "In the event it becomes necessary to have such work hereinbefore described contracted out, the Employer shall let out such work to and select contractors who have with the International Association of Machinists collective bargaining agreements which contain provisions corresponding to or consistent with the aforesaid jurisdictional limitations."

In practice this provision was interpreted by the Machinists to require that in the construction of new buildings and the expanding of existing buildings, plaintiff shall deal only with independent construction contractors who agree to do the work of moving, erecting and installing machinery therein with employees who are represented by the Machinists. By this interpretation the Machinists intended to get for their members work which traditionally had been performed by members of other Unions, who were not employees of plaintiff, and which work had never been performed for plaintiff by members of the Machinists'

organization except in the one instance in June, 1949, as aforesaid.

This attempt by the Machinists to obtain additional work which they had never performed for plaintiff, transcended any attempt to prevent a "runaway shop" and amounted to a deliberate attempt by defendants to expand the scope of their representation to cover employees of independent construction contractors through the exercise of coercive pressure on plaintiff.

IX.

Plaintiff was advised by its legal counsel that as interpreted by the Machinists, Section 2 of Article VII would require plaintiff to become a party with the Machinists to a common law conspiracy against the independent construction contractors and their employees, and that such a conspiracy also violated Section 416.010, R. S. Mo. 1949, the Missouri Anti-Trade Restraint Law. Plaintiff advised defendants prior to the expiration date of the 1951 bargaining agreement that it could not agree to the reinsertion of Section 2 of Article VII, as interpreted by defendants, in the bargaining agreement for the calendar year 1952.

X.

In collective bargaining prior to April 7, 1952, plaintiff and defendants reached substantial agreement with regard to all phases of the 1952 agreement except Section 2 of Article VII. Defendants made clear their intended meaning of the section that plaintiff should refuse to deal with any construction contractor unless he would agree to do the work of moving, erecting and installing the machinery in connection with the construction of new buildings and the expanding of existing buildings, with employees who were represented by District No. 9 of the

International Association of Machinists as their bargaining agent.

It was defendants' announced purpose to obtain like agreements from all the other breweries in the St. Louis area, so that under pressure from all the brewers the construction contractors would be forced to deal with the defendants as bargaining representative for their employees engaged in the moving, erecting and installing of machinery, notwithstanding the fact that these employees were already represented by the Millwrights' organization. In the alternative, the construction contractors would have to replace their present employees with members of the Machinists' organization. To aid defendants in accomplishing this end, plaintiff was directed by defendants to use influence and pressure on the construction contractors and on the other local brewers.

Under the terms sought to be imposed by defendants, individuals working for or seeking to work for independent construction contractors, moving, erecting and installing machinery at the breweries in the St. Louis area, would have to forego representation by their present bargaining representatives, the Millwrights, with whom the construction contractors already had valid collective bargaining agreements, and become affiliated with defendants' labor organization, the Machinists, in order to retain their jobs with the contractors, or their opportunities for periodic employment at such work.

Defendants obtained the insertion of a clause identical with Section 2 of Article VII in their 1952 bargaining agreement with one brewery in the St. Louis area.

XI.

The aforesaid conduct of the defendants, individually and collectively, as directed against the independent construction contractors and their employees, constituted a

conspiracy in violation of the laws of the State of Missouri. If plaintiff inserted Section 2 in Article VII of the 1952 bargaining agreement, as demanded by defendants, having in mind the interpretation defendants placed thereon, and the effects defendants intended to achieve thereby, plaintiff would become a party to said unlawful conspiracy, and as such would be liable at common law to all injured parties for their damages, and under the Missouri Anti-Trade Restraint statute would be liable for the payment of treble damages and subject to criminal prosecution.

XII.

No bona fide labor dispute existed between defendants and plaintiff on April 7, 1952, but defendants prior to that date had continued to raise specious points and issues with reference to matters with which they were already actually in accord with plaintiff, in order to give the false appearance that a labor dispute existed.

XIII.

On April 7, 1952, solely to compel plaintiff to join in the aforesaid conspiracy with the Machinists against the construction contractors and their employees, defendants called a strike of Machinists at plaintiff's plant and placed a picket line around the plant.

XIV.

Defendants' picket line was so placed and maintained that it prevented the movement of railroad cars into and out of plaintiff's premises by a common carrier without danger of physical injury to the pickets, and movement of the cars was stopped for that reason. A delivery of coal by a private carrier likewise was prevented in the same manner.

XV.

The physical presence of defendants' picket line made it impossible for plaintiff to get supplies into the plant and processed materials out of the plant, and forced plaintiff to suspend operations at its plant at 721 Pestalozzi Street, St. Louis, Missouri, for a period of twelve days, during which time it suffered irreparable damages due to spoilage of partly processed grains which it could not process to completion.

XVI.

The conduct of defendants, individually and collectively, as directed against plaintiff for the purposes aforesaid, constituted a conspiracy in violation of the common law of the State of Missouri, and likewise in violation of Section 416.010, R. S. Mo. 1949.

XVII.

Plaintiff has not, and cannot have, any adequate remedy at law under the facts and circumstances hereinbefore set out, and the damage and injury to plaintiff from the maintenance by defendants of a picket line upon or about plaintiff's premises and premises used by plaintiff in the carrying on of its business, under such facts and circumstances, is irreparable and such as to require immediate protection of a court of equity.

Wherefore, It Is Ordered, Adjudged and Decreed by the Court:

1) That the defendants Lloyd Weber, Russell L. Davis, Walter Patrick, Thomas Blake, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer, and Thomas Mulvaney, and each of them, individually and as representatives of the class of persons who are members of and known as the International Associa-

tion of Machinists, District No. 9, be, and they are hereby permanently enjoined and restrained from:

(a) Conspiring, conniving and unlawfully agreeing to cause, or causing or participating in, concerted action of any nature, including strikes among employees of plaintiff, and the establishment and maintenance of pickets or picket lines at plaintiff's main plant, or elsewhere, for the purpose of forcing or requiring plaintiff to agree with the International Association of Machinists, District No. 9, that work of constructing new buildings, expanding old buildings, and moving, erecting and installing machinery in such new buildings and expanded old buildings, let out by plaintiff to contractors of any nature or description, shall by said contractors be assigned to employees of said contractors who are members of or are represented by said International Association of Machinists, District No. 9, and from carrying on such activities for the purpose of forcing and requiring plaintiff, and those with whom it so contracts, to assign particular work to employees represented by or who are members of said International Association of Machinists, District No. 9.

(b) So proceeding or so interfering with or restricting passage on or over the various streets, roadways and railroad tracks, or any of them as to affect or interfere with the delivery of materials, goods and products to and from plaintiff's premises; or by any other conduct interfering with the delivery of materials, goods and products to and from plaintiff's premises.

(c) Picketing, setting up a picket line or lines, or maintaining a picket line or lines, on or about the premises of plaintiff; or picketing, setting up a picket line or lines, or maintaining a picket line or lines di-

rected at or against plaintiff, on or about premises where plaintiff stores or warehouses beer and other products, or transacts business in connection therewith.

2) That the costs of this proceeding be paid by defendants, and that execution issue therefor.

Draft filed.

NOTICE OF APPEAL FILED.

On November 20, 1952, the defendants filed their notice of appeal to the Supreme Court of Missouri, in words and figures, as follows, to-wit (caption and signature of counsel omitted):

NOTICE OF APPEAL.

Notice is hereby given that Lloyd Weber et al., the defendants above named, hereby appeal to the Supreme Court of the State of Missouri from the judgment entered in this action on the Third day of October, 1952, and the order of this Court on the 17th day of November, 1952, overruling the defendants' Motion for a new trial and other motions in said cause.

Dated November 20, 1952.

DOCKET FEE PAID.

On November 25, 1952, the defendants deposited Ten Dollars with the Clerk of the Circuit Court of the City of St. Louis as the docket fee for the Supreme Court of Missouri.

CLERK'S CERTIFICATE SHOWING MAILING OF NOTICE OF APPEAL TO THE PARTIES THEREIN NAMED FILED.

On November 26, 1952, the Clerk of the Circuit Court filed the following memorandum in this cause, to-wit (signatures omitted):

MEMORANDUM OF THE CLERK.

I have this day mailed by registered mail a copy of the within notice of appeal to each of the following persons at the address stated:

Roberts P. Elam and David Y. Campbell, 812 Olive St., St. Louis 1, Mo., attys. for plff.

I have also mailed a copy of the notice of appeal to the clerk of the Supreme Court of Missouri together with the docket fee deposited by appellant.

Dated November 26th, 1952.

TRANSCRIPT OF RECORD ON APPEAL APPROVED.

This transcript on appeal is hereby approved this 6th day of April, 1953.

Mark D. Eagleton,
Roberts P. Elam,
David Y. Campbell,
Attorneys for Plaintiff.

Robt. A. Roessel,
Attorneys for Defendants.

CERTIFICATE OF COURT REPORTER.

I, Margaret M. Bresnahan, court reporter in Division No. 2 of the Circuit Court of the City of St. Louis, Missouri, certify that the above and foregoing is a full transcript of the record in the above cause.

I certify that the cost of preparing the full transcript of record is as follows:

154 pages (original) at 45¢ per page	$69.30
154 pages (carbon copy) at 15¢ per page	23.10
Total	$92.40
2 additional carbon copies at 15¢ per page	$46.20

I certify that the full cost of preparing said transcript of the record in the amount of $138.60 has been paid by appellant.

Margaret M. Bresnahan,
Court Reporter, Div. No. 2 of
the Circuit Court of the City
of St. Louis.

[fol. 103] IN THE SUPREME COURT OF THE STATE OF MISSOURI

No. 43,522

ANHEUSER-BUSCH, Incorporated, a corporation, Respondent,

vs.

LLOYD WEBER, RUSSELL L. DAVIS, WALTER PATRICK, THOMAS BLAKE, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer, and Thomas Mulvaney, Individually and as Representatives of the International Association of Machinists, District No. 9, Appellants

JUDGMENT—February 8, 1954

Now at this day come again the parties aforesaid, by their respective attorneys, and the Court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment of aforesaid, in form aforesaid, by the said Circuit Court of the City of St. Louis rendered, be in all things affirmed, and stand in full force and effect; and that the said respondent recover against the said appellants its costs nd charges herein expended and have therefor execution. (Opinion filed.)

[fol. 104] IN THE SUPPREME COURT OF MISSOURI, DIVISION NUMBER ONE, JANUARY SESSION, 1954

No. 43522

ANHEUSER-BUSCH, INC., a Corporation, (Plaintiff) Respondent

vs.

LLOYD WEBER, RUSSELL L. DAVIS, WALTER PATRICK, THOMAS BLAKE, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer, and Thomas Mulvaney, Individually and as Representatives of the International Association of Machinists, District No. 9, (Defendants) Appellants

Appeal from the Circuit Court of the City of St. Louis

Honorable DAVID J. MURPHY, Judge

OPINION—Filed February 8, 1954

Anheuser-Busch, Inc., hereinafter called plaintiff, operates a brewery and has its principal place of business and plant (covering about 72 city blocks) in the City of St. Louis, Missouri, where it has about 6000 employees. It is there engaged in manufacturing and selling beer, yeast, corn products and other commodities. It purchases and there uses large quantities of grains and other raw materials which are transported and delivered to it at its St. Louis plant by common and private carriers and otherwise. In its St. Louis plant it processes said raw materials into salable commodities. From its said plant it transports and distributes its manufactured commodities for sale to wholesalers, dealers and to warehouses locally and in other cities, by common and private carriers and in its own trucks. In its St. Louis plant plaintiff employs 220 Machinists who are members of the International Association of Machinists, District No. 9, hereinafter called the "Union." Defendants are individually members of, and herein represent the entire class of persons who are members of District 9 of the Union. The Union is the bargaining agent of the above mentioned 220 Machinists. Defendants have

appealed from a judgment of the Circuit Court of the City [fol. 105] of St. Louis, which, after a hearing on the merits, on October 3, 1952, awarded plaintiff a permanent injunction against the defendants and the Union picketing plaintiff's plant.

There is no labor dispute between plaintiff and its employees, and no unfair labor practice is here involved. District No. 9 International Association of Machinists A. F. of L., and Anheuser-Busch, Inc., 101 N. L. R. B., page 346, Labor Management Relations Act, 1947 (Taft-Hartley Act) amending the National Labor Relations Act of 1935, 29 U. S. C. A., § 151, et seq., § 152(9).

The petition of plaintiff prayed an injunction to restrain the picketing of plaintiff's plant by defendants and the Union alleging that such picketing was in furtherance of an unlawful conspiracy, agreement and combination in restraint of trade in the transportation or competition in the importation, transportation, manufacture, purchase and sale of products and commodities in this State in violation of Section 416.010, RSMo. 1949, V. A. M. S.; that defendants and the Union members had unlawfully conspired and seek to compel plaintiff to conspire with the Union members against certain contractors and their employees, and that the picketing of plaintiff's plant was an illegal and coercive act of such conspiracy; and that as a result of such conspiracy and picketing plaintiff was prevented from receiving raw materials in transportation, operating its plant, and transporting its products.

Defendants answered admitting the Union did go on strike on April 7, 1952, and did then place a picket line around plaintiff's plant, and further alleged the picketing was without violence "to tell the world of their position"; the answer also made denial of certain allegations, and alleged plaintiff "has an adequate remedy at law and under the National Labor Relations Act, as amended, and the Labor Management Relations Act."

From the agreed statement of facts and from the evidence in the record before him, and now before us, the Chancellor could have found, and did factually find:

[fol. 106] (1) That plaintiff's above noted manufacturing processes are continuous in nature and interrelated, and the involuntary stoppage of any or all such processes auto-

matically results in progressive spoilage of partially processed grains, yeast, malt and other substances to plaintiff's extensive damages; that the Union members in plaintiff's employment are steadily employed in plaintiff's plant in the repair and maintenance of plaintiff's machinery and equipment therein; that plaintiff's business now and in the future requires and involves the regular and necessary expansion of its plant and facilities by constructing new buildings and expanding existing buildings, and installing, moving and perfecting new machinery and equipment therein, and that plaintiff does not have the means or facilities or equipment for doing that work with its own employees; that for 30 years it has been necessary to, and that new construction and expansion work has always regularly been contracted out by plaintiff to independent construction contractors and such work was not done by plaintiff through any of its regular or part time employees; that the only exception to that was in 1949, when, to end a controversy between the Union and certain Millwright employees of an independent contractor, plaintiff finished certain new machinery installation with its own regularly employed Machinists; that the finishing of that 1949 work by plaintiff resulted in a work stoppage on the construction job by the Carpenters (with whom the Millwrights are affiliated); that the above independent construction contractors perform their above mentioned work for plaintiff with their own employees who are represented under collective bargaining agreements by the Millwrights Union, an affiliate of the United Brotherhood of Carpenters, and those employees of the contractors are not subject to any control by plaintiff, and plaintiff does not employ, discharge or supervise the functions of any of those employees; that there is no contractor, large or small, in the St. Louis area whom plaintiff could select for its above new construction [fol. 107] and expansion work whose employees are represented by the Machinists Union;

(2) That for at least 25 years the Machinists Union and the Millwrights have been engaged in an unresolved and continuing jurisdictional dispute regarding the representation of the above independent construction contractors' employees who move, erect and install machinery in buildings which have been expanded and enlarged, and in newly con-

structed buildings; that the Millwrights are affiliated with the Building and Construction Trades Council in St. Louis and the Machinists Union is not a member of that Council; that the Millwrights and Machinists Unions each make recurring demands upon such independent contractors, and picketing has resulted, when demands are not met; that plaintiff is not a party to any of those jurisdictional disputes;

(3) That in the collective bargaining agreements between plaintiff and the Union, beginning with the first such agreement in 1948, and through the 1951 agreement, it was agreed by plaintiff, in Section 1 of Article VII, that all the therein listed Machinist work "performed *within the employer's plant* by the employer shall be performed" by the Union; that such agreement expressed the traditional relationship of the plaintiff and the Union over a 25 year period and has never been and is not now in dispute; that at the demand of defendants, the 1951 agreement of plaintiff and the Union also provided, in Section 2 of Article VII, that: "In the event it becomes necessary to have such work hereinbefore described contracted out, the Employer shall let out such work to and select contractors who have with the International Association of Machinists collective bargaining agreements which contain provisions corresponding to or consistent with the aforesaid jurisdictional limitations"; that in practice that provision was interpreted by the Union to require that in constructing new buildings and expanding existing ones plaintiff should let such proposed [fol. 108] new construction and expansion work only to independent construction contractors who agreed to do the moving, erecting and installing of machinery therein with only employees represented by the Machinists Union, and the Union thereby sought to secure for Union members the work traditionally performed by members of other unions; that by such attempt of the Union to so obtain work it had never before performed for plaintiff the Union sought, through the exercise of coercive pressure on plaintiff, to expand the scope of its representation to cover and include employees of the above independent construction contractors;

(4) That before the expiration date of the 1951 bargaining agreement plaintiff advised the Union that it could not agree to the reinsertion in the bargaining agreement for

1952 of the above set out Section 2 of Article VII, and that it had been advised by its legal counsel that, as above interpreted by the Union, Section 2 of Article VII would require and compel plaintiff to become a party with the Union to a common law conspiracy against the above independent construction contractors and their employees, and that such conspiracy was also in violation of Section 416.010 RSMo. 1949, V. A. M. S., the Missouri statute which declares combinations in restraint of trade to be a conspiracy;

(5) That in the negotiations for a collective bargaining agreement for 1952 between plaintiff and the Union, and prior to April 7, 1952, plaintiff and the Union were in accord with regard to all provisions of the proposed 1952 agreement except the above set out Section 2 of Article VII; that in such negotiations the Union, through the individual defendants, made clear the Union's intention that plaintiff should refuse to contract any work to any independent construction contractor unless the latter would agree to do the work of moving, erecting and installing all machinery in connection with the construction of new buildings and the expansion of existing buildings with employees who were represented by the Machinists Union;

(6) That the Union announced its purpose and intention [fol. 109] to obtain agreements similar to Section 2, Article VII, above, from all breweries in the St. Louis area so that under pressure from all the brewers the construction contractors would be compelled to bargain with the Union as bargaining representative for their employees moving, erecting and installing machinery notwithstanding those employees were already represented by the Millwrights' Union, or, the construction contractors would be compelled to replace their Millwright employees with Machinist employees; that to assist the Union to accomplish that end, plaintiff was directed by the Union to use pressure on the construction contractors and the other St. Louis area brewers;

(7) That under the terms as above sought to be imposed by the Union, persons employed by or seeking to work for the above construction contractors in moving, erecting or installing machinery in St. Louis area breweries would be compelled to forego representation by their present bar-

gaining agent, the Millwrights' Union, with whom the said construction contractors now have valid collective bargaining agreements, and become affiliated with the Machinists' Union in order to retain their employment with such contractors or lose their opportunity for periodic employment at that work; that after the strike which started April 7, 1952, at plaintiff's plant, the Union did secure the inclusion of a clause identical with Section 2 of Article VII above in its 1952 bargaining agreement with the Griesedieck Western Brewery in Belleville, Illinois, and St. Louis;

(8) That the above conduct of defendants and the Union, individually and collectively, as against the construction contractors and their employees, constituted and was a conspiracy in violation of the above Section 416.010; that if Plaintiff had agreed to the inclusion of the above Section 2 of Article VII into its 1952 bargaining agreement, as demanded by the defendants and the Union, under the interpretation defendants placed thereon and the result defendants intended to achieve thereby, plaintiff would have become party to an unlawful conspiracy and liable to all [fol. 110] injured parties for their damages, and, under the above Missouri statute liable for treble damages and subject to criminal prosecution; that no bona fide labor dispute existed between plaintiff and the Machinists Union on April 7, 1952; that prior to that date defendants and the Union, both in — out of said bargaining negotiations, continued to raise specious and feigned points and issues respecting matters as to which defendants were actually in accord with plaintiff, in order to give the false impression to the public that a labor dispute existed;

(9) That on April 7, 1952, solely to compel plaintiff to join in the above mentioned conspiracy with the Machinists Union against the above construction contractors and their above noted employees, defendants and the Union called a strike of Machinists at plaintiff's said plant and placed a picket line around said plant; that as a result of said strike plaintiff was unable to obtain a sufficient production force to operate its plant, and transportation in and out of plaintiff's plant ceased;

(10) That the picket line of the Union around plaintiff's plant was so placed, maintained, operated, utilized and manipulated that it effectively prevented the movement of

loaded railroad freight cars into and out of plaintiff's premises and plant and effectively prevented and wholly stopped the transportation of raw materials into said plant or manufactured products therefrom without physical injury to the pickets and thereby effectively stopped the movement of cars and the transportation of plaintiff's raw material and manufactured products; that the necessary delivery of coal to said plant was likewise stopped in the same manner; that the physical presence and the above stated manipulation of said picket line made it impossible to transport supplies and raw materials into said plant and to transport plaintiff's processed materials out of plaintiff's said plant and because thereof plaintiff was forced to close its said plant for 12 days, during which time plaintiff suffered [fol. 111] irreparable damages due to spoilage of partially processed grains and other materials which it could neither process to completion nor transport; that the conduct of defendants, individually, collectively, and as such Union, as directed against plaintiff for the purposes above, constituted and was a conspiracy at common law and was also in violation of said above Section 416.010.

The above findings and conclusions of the trial court were supported by substantial evidence.

It also appeared from the evidence heard by the Chancellor: (a) that the picketing of plaintiff's plant was unaccompanied by violence, other than as hereinafter noted; that plaintiff had in its employment building trades workers whose Unions were members of the Building and Construction Trades Council and plaintiff had collective bargaining agreements with such Unions covering such employees; that during the above contract negotiations defendants stated that unless plaintiff agreed to the reinsertion in the 1952 contract of the above Section 2 of Article VII defendants would speciously contend the parties were in disagreement on other contract provisions and would make further demands in other contract fields, because defendants were unwilling to openly acknowledge that Section 2 of Article VII was the only point in issue;

(b) That on April 9, 1952, the president of the plaintiff company met with defendant Lloyd Weber, business representative of the Union, at which time Mr. Weber stated that the reason he wanted Section 2 of Article VII in the Union's

1952 contract wth plaintiff was that he, Mr. Weber, "had us (plaintiff) over the barrel, so to speak, and the pressure was against Anheuser-Busch, and that we (plaintiff) were the largest employers of Machinists and we (plaintiff) could control the contractors and force the contractors to employ Machinists"; that Mr. Weber stated that every other phase of the contract was acceptable but that Mr. Weber insisted that Section 2 of Article VII be also included in the contract; that Mr. Weber stated, "It had to be that or else"; [fol. 112] that Mr. Weber also stated that Anheuser-Busch, because it was the largest employer of Machinists in the area, could put the pressure on the contractors and "the rest of the breweries would have to go along" and that "the Machinists could get the work now being done by the Millwrights";

(c) That during the picketing of plaintiff's plant a number of the pickets who were around plaintiff's plant and picketing the plant were upon the railroad tracks leading into and out of plaintiff's plant; that the transportation into and out of the plant was stopped "because it endangered their lives and limbs"; that the pickets would not clear the railroad track so the movement and transportation in and out of plaintiff's plant could be maintained; that the railroad motive power units pulling cars were moved to within 12 inches of the pickets and then stopped; that the pickets were moving onto and off of the track in a small compact circle but some of the pickets were constantly on the track in front of the train; that the train was stopped and the transportation thereby blocked to prevent physical injury to the pickets; that other pickets were "bunched rather heavily in front of our truck" delivering coal to plaintiff's brewery; that the truck ran to within 12 inches of the pickets and was prevented from proceeding further.

We think it clearly appears and we rule from the above noted substantial evidence that: (a) the above conduct of defendants and the Union, as directed against the independent construction contractors and their Millwright employees, constituted and was a conspiracy in violation of the common and statutory law of this State; (b) that the sole and unlawful purpose of the concerted action of defendants and the Union in picketing plaintiff's plant was to effectuate the Union's unlawful conspiracy and to compel

and coerce plaintiff to join said conspiracy to violate the law by acquiescing in the Union's unlawful demands; (c) that the picketing of plaintiff's plant was effectuated by an agreement and combination of the members of the Union [fol. 113] in restraint of trade and that such picketing was and constituted a local transportation combination which denied and unlawfully prevented the transportation of products and commodities to or from plaintiff's plant, and the processing and manufacturing of products and commodities therein.

It seems clear to us that in picketing plaintiff's plant on April 7, 1952, and thereafter, defendants did so, not as the result of nor as any step in a labor dispute with plaintiff. In that picketing defendants took their final steps in their effort to coerce and compel plaintiff to become an active participant in defendants' conspiracy against the independent contractors and their Millwright Union employees. The instant picketing by the Union was for an illegal purpose.

"A combination for the purpose of causing a breach of contract has been held to be an unlawful conspiracy. A person who by conspiring with another or by collusive agreement with him assists him to violate his contract with a third person and to obtain the benefit of that contract for himself commits an actionable wrong." Rosen v. Alside, Mo. Sup., 248 S. W. (2) 638, 643. Picketing for an unlawful purpose may be enjoined. Fred Wolferman, Inc. v. Root, 356 Mo. 976, 204 S. W. (2) 733, 174 A. L. R. 585, Kincaid-Webber Motor Co. v. Quinn et al., 362 Mo. 375, 241 S. W. (2) 886.

In Chapter 416 of the Missouri statutes respecting "Monopolies, Discriminations and Conspiracies," Section 416.010, "Combination in restraint of trade declared a conspiracy" it is provided that:

> "Any person who shall create, enter into, become a member of or participate in any pool, trust, agreement, combination, confederation or understanding with any person or persons in restraint of trade or competition in the importation, transportation, manufacture, purchase or sale of any product or commodity in this state, or any article or thing bought or sold whatsoever, shall [fol. 114] be deemed and adjudged guilty of a con-

spiracy in restraint of trade, and shall be punished as provided in sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400. (8301)."

The above statute has been considered by the courts on prior occasions. Rogers v. Poteet, 355 Mo. 986, 199 S. W. (2) 378; Hobbs v. Poteet, 357 Mo. 152, 207 S. W. (2) 501; Empire Storage & Ice Co. v. Giboney, et al., 357 Mo. 671, 210 S. W. (2) 55 and Giboney v. Empire Storage & Ice Co., 336 U. S. 490, 69 S. Ct. 685, 93 L. Ed. 834. Other cases could be cited.

In Rogers v. Poteet, supra, union members in combination with each other picketed a milk processing plant to prevent rural milk haulers, who were not union members but independent contractors, from transporting and delivering milk to processing plants. We held such concerted action was "a confederation in restraint of competition in the transportation of fresh fluid milk to all the milk processing plants in that area" in violation of the statute (now Section 416.010) which forbade restraint of competition in the transportation of commodities, and affirmed the lower court's injunction.

In Empire Storage & Ice Co. v. Giboney, et al., supra, union members in combination with each other picketed Empire's plant to compel Empire to stop selling ice to non-union ice peddlers. Empire was thus threatened with the alternative of either ceasing to do business with some of its customers, or, "having its business destroyed through a local transportation combination substantially denying delivery service to or from its plant." In that case we ruled that the union used their "local transportation combination improperly to threaten and to produce injury and damage through a boycott of plaintiff's business, and incidentally to injure the business of citizens who are regular customers of its cold storage warehouse, by cutting off supplies to and from its customers"; that the purpose of the [fol. 115] picketing violated Section 416.010, quoted above; that by the picketing the union was "attempting to force plaintiff to become a party to such combination"; and we affirmed the action of the lower court in enjoining the picketing of plaintiff's plant.

The Giboney case went on by appeal and, in a unanimous

opinion, was afirmed by the United States Supreme Court on April 4, 1949. See 336 U. S. 490, 69 S. Ct. 685, 93 L. Ed. 834. That court upheld the Missouri injunction enjoining the picketing. In so doing the United States Supreme Court affirmed the validity of Section 416.010, stating that "Agreements and combinations * * * to dictate the terms under which transportation will be supplied," is a well recognized trade restraint practice "which both state and national legislation can and do prohibit"; that "there is nothing in the Constitution of the United States which precludes a state from adopting and enforcing such policy"; and that the constitutional guaranties do not "afford labor union members a peculiar immunity from laws against trade restraint combinations."

In the course of its Giboney opinion the United States Supreme Court further said: "We are without constitutional authority to modify or upset Missouri's determination that it is in the public interest to make combinations of workers subject to laws designed to keep the channels of trade wholly free and open. * * * Thus all of appellants' activities—their powerful transportation combination, their patrolling, their formation of a picket line warning union men not to cross at peril of their union membership, their publicizing—constituted a single and integrated course of conduct, which was in violation of Missouri's valid law. * * * Missouri has by statute regulated trade one way. The appellant union members have adopted a program to regulate it another way. The state has provided for enforcement of its statutory rule by imposing civil and criminal sanctions. The union has provided for enforcement of its rule by sanctions against union members who cross picket lines. * * * *We hold that the state's* [fol. 116] *power to govern in this field is paramount*, and that nothing in the constitutional guaranties of speech or press compels a state to apply or not to apply its antitrade restraint law to groups of workers, businessmen or others." [Emphasis supplied] We think that case rules the questions now before us.

Notwithstanding the above rulings defendants instantly contend that state courts are without jurisdiction in this character of case, asserting that under the provisions of the National Labor Relations Act and the Labor Manage

ment Relations Act, 1947, the Congress took over *all* controversies with labor by occupying the entire field of all possible Union activities. Defendants' reasoning or statements in their brief purporting to support such assertion are quite unclear and obscure. In any event we do not agree with that assertion. The above quoted opinion of the United States Supreme Court in the Giboney case was handed down nearly two years after the effective date of the Labor Management Relations Act (Taft-Hartley Act) in June, 1947.

As nearly as may be determined from their brief defendants' last stated contention seems to be based upon their ipse dixit that a labor dispute existed between the plaintiff and the Union, and that unfair labor practices are here involved. Defendants' instant brief many times asserts the existence of a labor dispute between these parties. Upon oral argument here the Union's counsel so stated. But upon the substantial evidence before him in this case, and under the provisions of the National Labor Relations Act and the Labor Management Relations Act, 1947, the trial chancellor properly found that no labor dispute existed between these parties. And too, this identical matter was before the National Labor Relations Board upon these facts in Case No. 14-CD-27, upon the Union's charge of unfair labor practices filed under the Labor Management Relations Act on March 24, 1952. In November, 1952, and after a full hearing, the National Labor Relations Board reviewed these facts at length in an opinion filed on November 18, 1952, 101 N.L.R.B., p. 346, No. 87. The Na- [fol. 117] tional Labor Relations Board there squarely held that upon these facts no labor dispute existed between these parties and that no unfair labor practices were there involved, and the Board, upon such ruling, quashed the notice of the hearing.

The cases relied on by the defendants are largely cases involving existing labor disputes and unfair labor practices. We think those cases are not in point.

Defendants rely upon Joseph Garner et al. v. Teamsters etc. Union, Case No. 56, decided by the United States Supreme Court on December 14, 1953 (not yet officially reported), Capital Service v. National Labor Relations Board, 204 Fed. (2) 848, International Union v. O'Brien,

339 U. S. 454, 70 S. Ct. 781, 94 L. Ed. 978, Amazon Cotton Mill Co. v. Textile Workers Union, 167 Fed. (2) 183, California Ass'n of Employers v. Building and Construction Trades Council, 178 Fed. (2) 175, Bethlehem Steel Co. v. State Labor Board, 330 U. S. 767, 67 S. Ct. 1026, 91 L. Ed. 1234.

In Garner v. Teamsters Union, supra, the above court, in part, said: "The Supreme Court of the Commonwealth (Pennsylvania) held, quite correctly, we think, that petitioners' grievance fell within the jurisdiction of the National Labor Relations Board to prevent unfair labor practices." And the court there further stated: "The National Labor Management Relations Act, as we have pointed out, leaves much to the States, though Congress has refrained from telling us how much. * * * Nor is there any suggestion that petitioners' plea of federal jurisdiction and pre-emption was frivolous and dilatory, or that the federal Board would decline to exercise its powers *once its jurisdiction was invoked.*" [Emphasis ours] In Capital Service v. National Labor Relations Board, supra, a federal District Court had issued an injunction at request of National Labor Relations Board in a case presenting an unfair labor practice which was recognized as such by that Board. It was there correctly held that under those cir-[fol. 118] cumstances, the Federal jurisdiction was exclusive under § 160(a) of the Taft-Hartley Act. International Union v. O'Brien, supra, ruled only that certain provisions of the Michigan labor mediation law were invalid under the Commerce Clause of the Federal Constitution. In Amazon Cotton Mill Co. v. Textile Workers Union, supra, wherein the Union alleged that the employer was guilty of an unfair labor practice in refusing to bargain, it was held the Taft-Hartley Act did not vest the federal District Courts with coordinate jurisdiction with the National Labor Relations Board over unfair labor practices. In California Ass'n v. Building and Construction Trades Council, supra, it was held that the National Labor Relations Board has jurisdiction where defined unfair labor practices are at issue. In Bethlehem Steel Co. v. New York Labor Relations Board, supra, ruled prior to the effective date of the Taft-Hartley Act, it was held that the refusal of the National Labor Relations Board to recognize foremen's

unions as appropriate units for collective bargaining did not leave the State authorities administering a State labor law free to do so.

Clearly the just above cases relied on by defendants do not support defendants' contention that the State circuit court was without jurisdiction in the case *now* before us. In the Garner, Capital Service, Amazon Cotton Mill and California Ass'n. cases, supra, unfair labor practices were squarely in issue, and jurisdiction of those cases was in the National Labor Relations Board under § 160(a) of the Labor Management Relations Act, 1947. The Bethlehem Steel and the International Union cases are not determinative of or related to the issue now before us. But these instant facts were before the National Labor Relations Board and no unfair labor practices and no labor dispute was found to exist. The National Labor Relations Board so ruled. A jurisdictional quarrel between two rival labor unions is not a labor dispute within the Norris-La Guardia Act, the Wagner Act or the Taft-Hartley Act.

In Algoma Plywood & Veneer Company v. Wisconsin [fol. 119] Employment Relations Board, (decided March 7, 1949, and subsequent to the effective date of the Labor Management Relations Act, 1947) the Supreme Court of the United States, 336 U. S. 301, 69 S. Ct. 58, 93 L. Ed. 702, said: "Since the enumeration by the Wagner Act and the Taft-Hartley Act of unfair labor practices over which the National Board has exclusive jurisdiction does not prevent the States from enforcing their own policies in matters not governed by the federal law, such freedom of action by a State cannot be lost because the National Board has once held an election under the Wagner Act. The character of activities left to State regulation is not changed by the fact of certification."

In International Union v. Wisconsin Employment Relations Board, 336 U. S. 245, 69 S. Ct. 516, 93 L. Ed. 651, (decided February 28, 1949) the United States Supreme Court considered the authority of the Wisconsin State Board to issue a cease and desist order. In that case bargaining proceedings between the union and the employer were deadlocked. To bring pressure on the employer, the union in five months called 27 union meetings at irregular times during working hours without notice, and without

indication to the employer of how long the employees would cease work. The employer thus could make no dependable production plans or delivery commitments. Under the State Act the Wisconsin Board ordered the union to cease and desist such practices. The State Supreme Court affirmed. In holding the State Board had jurisdiction to make the above order the United States Supreme Court, in part, said: "Congress has not seen fit in either of these Acts (Wagner Act and Taft-Hartley Act) to declare either a general policy or to state specific rules as to their effects on state regulation on various phases of labor relations over which the several states traditionally have exercised control. * * * However, as to coercive tactics in labor controversies, we have said of the National Labor Relations Act what is equally true of the Labor Management Act of 1947, that Congress designedly left open an area for state control and that the intention of Congress to exclude the [fol. 120] States from exercising their police power must be clearly manifested. * * * We find no basis for denying to Wisconsin the power, in governing her internal affairs, to regulate a course of conduct neither made a right under federal law nor a violation of it and which has the coercive effect obvious in this device." See also, Kincaid-Webber Motor Co. v. Quinn, supra, State ex rel Allai v. Thatch, 361 Mo. 190, 234 S. W. (2) 1, 9.

The instant facts have presented to us, not a labor dispute or an unfair labor practice, but activities by and conduct of the Union which were coercive tactics restraining freedom of trade, an internal affair over which this State has "traditionally exercised control." Many years ago, in the enactment of what is now Section 416.010, the legislature declared for Missouri the policy that it is in the public interest to keep trade channels free and open. In no federal legislation do we find any expression of congressional intention which would prevent this state from exercising its traditional and inherent police power in that respect. The State's power to govern in this field has always been held to be supreme.

For reasons above appearing, defendants' contention that the state circuit court was without jurisdiction to grant the injunction must be denied. And upon the facts before it, we must rule that the circuit court properly issued the

instant injunction. Its action in so ordering the injunction to issue is affirmed.

Defendants also contend that the injunction order is too broad. This contention is based upon defendants' position taken here that a labor dispute existed between these parties; that the purpose of the picketing by the Union was not unlawful, and that the injunction issued in the circuit court violated defendants' rights to freedom of speech. Defendants cite Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093. We have above ruled that no labor dispute existed between these parties and that the purpose of the picketing was unlawful and was in violation of a criminal statute.

In the Giboney case, supra, the United States Supreme [fols. 121-122] Court discussed the case of Thornhill v. Alabama, supra, in this respect, and, held in the former case that the Union's entire activities in the picketing "constituted a single and integrated course of conduct, which was in violation of Missouri's valid law," and that the constitutional rights to freedom of the press and speech does not extend "its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute." Under the instant pleadings and the evidence, and under the present state of this record, there having been no renunciation of any character filed, we see no basis whatever for the contention that the injunction order should be in anywise modified. The contention must be denied.

The judgment appealed from its affirmed.

Roscoe P. Conkling, Judge.

All concur.

[File endorsement omitted.]

[fol. 123] In the Supreme Court of Missouri Division No. One, January Session 1954

No. 43522

Anheuser-Busch, Inc., a Corp.; (Plaintiff) Respondent

vs.

Lloyd Weber, et al, (Defendants) Appellants

Appeal from the Circuit Court of the City of St. Louis
Hon. David J. Murphy, Judge

Appellants' Motion for Rehearing—Filed February 20, 1954

Come now the Appellants and file this their motion for a re-hearing in the above matter in which this court on February 8, 1954 filed its opinion and decision affirming the ruling of the trial court, and for grounds of said motion state:

One. That this court has overlooked and completely ignored Article VI of the Constitution of the United States making the laws of the United States the supreme law of the land "—every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

Two. That this court has completely misinterpreted the Garner case (and the Kinard case) recently decided by the Supreme Court of the United States. The Supreme Court held that where the grievance fell within the jurisdiction of the N. L. R. B. to prevent unfair labor practices that therefore state remedies of any sort were pre-cluded. (74 Sup. Ct. Rep. l. c. 164).

Three. That this court has misinterpreted the ruling of the Garner case to wit: "Congress has taken in hand this [fol. 124] particular type of controversy when it affects interstate commerce—(74 Sup. Ct. Rep. l. c. 164 (4)) and hence the N. L. R. B. has exclusive jurisdiction.

Four. That this court has misinterpreted the ruling in the Garner case where it is held that Congress "—went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal—."

(74 Sup. Ct. Rep. l. c. 165 (5-7)) namely the N. L. R. B. which shall have exclusive jurisdiction.

Five. That this court has misinterpreted the ruling in the Garner case where it is held, "We conclude that when federal power constitutionally is exerted for the protection of public or private interests, or both, it becomes the Supreme law of the land and cannot be curtailed, circumvented or extended by a state procedure—". (74 Sup. Ct. Rep. l. c. 171 (16-18)). Hence this court has no jurisdiction in the instant case.

Six. That this court has misinterpreted the meaning and intent of Capital Service vs. NLRB. 204 Fed (2d 848; International Union vs. O'Brien 339 545, 70 Sup. Ct. 781, 94 L. Ed. 978; Amazon Cotton Mills vs. Textile Workers Union 167 Fed (2d) 183; California Association of Employers vs. Building Trades Council 178 Fed. (2d) 175; Bethlehem Steel Co. vs. State Labor Board 330 U. S. 767, 67 Sup. Ct. 1026, 91 L. Ed. 1234. The rule of law announced in all these cases is entirely consistent with Appellant's contention.

In the instant case this court misinterpreted the law when it held that the very same conduct within the federal jurisdiction was also amenable to state control under any state law.

Seven. That this court has misinterpreted the ruling of the Supreme Court of the United States in the Giboney case 330 U. S. 490, 69 Sup. Ct. 685, 93 L. Ed. 834 in that there was no question of jurisdiction there involved but rather only the question as to whether the 14th Amendment pre-
[fol. 125] cluded the action taken by the State Court. This case under neither the facts *or* the law has any application at bar. (Our reply Br. p. p. 6-8).

Eight. That this Court is in error when it says on p. 13 of its opinion and decision that the N. L. R. B. "—upon the *Union's charge* of unfair labor practice—after a full hearing—found that no unfair labor practices were involved—." The case before the N. L. R. B. was based on the Company's charge i. e., the charge of the Respondent's herein of an unfair labor practice. (See 101 N. L. R. B. No. 87, p. 346); that this court misinterpreted the ruling and decision of the N. L. R. B. The N. L. R. B. is by no means compelled to find that Respondent's charge be sus-

tained in orer to have jurisdiction to hear and determine the charge in the first instance. (Emphasis ours).

Nine. That this Court has clearly misinterpreted the cases of Rogers vs. Poteet 199 Sw 2d 378; Hobbs vs. Poteet 207 Sw (2d) 55, 336 U. S. 490, 69 Sup. Ct. 685, 93 L. Ed. 834 as we have shown in our Reply Brief p. 5. because in none of these cases was there a dispute direct with the employer involved. Likewise this court is clearly in error on p. 13 of its opinion and decision by inferring that the Taft-Hartley Act (L. M. R. A. 1947) governed the facts in the Giboney case. This court inadvert*ingly* so assumed when it said that the Giboney decision "—was handed down nearly two years after the effective date of—the Taft-Hartley Act in June 1947". The fact is that the facts in the Giboney case, which determine the law, occurred and took place prior to the Taft-Hartley Act or the L. M. R. A.—1947. The Taft-Hartley Act was not involved nor was the question of jurisdiction ever raised (See p. 8 our reply Brief). The Giboney case was decided solely on the question as to whether the 14th Amendment precluded State action.

Ten. That this court has entirely overlooked and ignored the case of Caldwell vs. Anderson et al, 212 S. W. (2d) which Appellants contend is controlling in the instant case. (See our Brief in Chief pp. 19-21).

[fol. 126] *Eleven.* That this Court has entirely overlooked and ignored the case of Dowd vs. Sheet Metal Workers, etc. 101 Fed. (2d) 273 which on the facts is directly in point and which case is cited by Appellants in p. 9 of the Reply Brief.

Twelve. That this Court has overlooked the evidence that this dispute was a direct one between the primary parties as to the retention in the proposed contract of a clause to protect the work of the instant Union for which it was certified and recognized by Art. 1, Sec. 1, of the contract between the parties. This Court has completely ignored the right of a labor organization to protect its work regardless of all other claims, jurisdictional disputes etc., especially in negotiations direct between the Union and the employer.

Thirteen. That this court has misinterpreted the provisions of Art. VII, Sec. 1—*Jurisdiction*, of the contract, namely that the jurisdiction of the Union applied only to

work within the employer's plant. This question is not directly or indirectly before the Court. There is no question before the Court calling for a construction as to what was meant by the phrase "within the employer's plant."

Fourteen. That this Court is completely in error in its effort to show "violence" or unlawful conduct on the part of the pickets. On Paragraph 10, p. 7, and sub-paragraph (c) p. 9 of its opinion and decision when this Court infers that such conduct as indicated was a continuous and re-occurring course of conduct characterizing all the picketing. There is not one scintilla of evidence to sustain this far fetched conclusion. See our Brief pp. 9, 33. This particular conduct occurred as a single, solitary instance in the first few hours of the picketing on the first day and was immediately discontinued and did not re-occur.

The importance and far reaching effects of the Court's decision requires that this case be reheard and re-argued or [fol. 127] that it be transferred to the Court en Banc.

Respectfully submitted, by Roessel-Boxdorfer-Brownell by Robert A. Roessel, Keith M. Brownell, Counsel for Appellants (Defendants).

Affidavit of Service by Mail of the Motion for a Rehearing, dated February 19, 1954, Omitted in Printing.

[File endorsement omitted.]

[fol. 128] IN THE SUPPREME COURT OF THE STATE OF MISSOURI

No. 43,522

[Title omitted]

ORDER DENYING REHEARING—March 8th, 1954

Now at this day, the Court having seen and fully considered the motion of the appellants for a rehearing in the above entitled cause or to transfer said cause to the Court en Banc, doth order that said motion be, and the same is hereby overruled in Per Curiam opinion filed.

[fol. 129] IN THE SUPPREME COURT OF MISSOURI, DIVISION NUMBER ONE, JANUARY SESSION, 1954

No. 43522

ANHEUSER-BUSCH, INC., a corporation, (Plaintiff) Respondent,

vs.

LLOYD WEBER, RUSSELL L. DAVIS, WALTER PATRICK, THOMAS BLAKE, Albert Melton, Winfield Scott Musler, Robert Hammer, Wilbert A. Reeb, Bernard Siemer, and Thomas Mulvaney, Individually and as Representatives of the International Association of Machinists, District No. 9, (Defendants) Appellants

OPINION ON MOTION FOR REHEARING—Filed March 8, 1954

Per CURIAM:

Defendants'-Appellants' motion for rehearing or to transfer to the Court En Banc asserts that Caldwell v. Anderson, 357 Mo. 1199, 212 S. W. (2) 784, and Douds v. Sheet Metal Workers, 101 Fed. Supp. 273, cited by defendants, are determinative and controlling of the issue presented us in this case, and complains that our opinion filed did not notice and discuss those cases. Those cases were examined and considered. We concluded that they did not rule the instant question.

In the Caldwell case, supra, plaintiffs employed only nonunion labor upon a home construction project in St. Louis County. Having been unable to persuade plaintiffs to employ union labor upon the construction project, defendants peacefully picketed the construction project. The purpose of the picketing was to compel plaintiffs to agree to employ upon the project only persons belonging to certain union organizations. We held the contract there sought was not unlawful and did not establish conspiracy. That case is not determinative of the issue presented to us in the [fol. 130] instant case.

In the Douds case, supra, the petition filed on behalf of the National Labor Relations Board against the Sheet Metal Union sought injunctive relief on the ground that the

union was engaged in a "secondary boycott" which the National Labor Relations Act had made an unfair labor practice. The court there ruled that the petition before it failed to allege facts which would establish a secondary boycott. The Douds case does not rule any issue now before us.

The motion for rehearing calls to our attention that in Case No. 14-CD-27, reported in 101 N. L. R. B., page 346, No. 87, it was the plaintiffs' charges of unfair labor practices which were dismissed. That fact can make no difference whatever in our conclusions in this case. The Union and the Company had each filed against the other charges of unfair labor practices before the N. L. R. B. The Union's charges of unfair labor practices by the Company were disposed of on August 17, 1953, and at a time when the fact of the issuance of the instant injunction was before that Board. The Union's charges were disposed of in "Administrative Decision of the General Counsel, Case No. 766," found in C. C. H. Labor Law Reporter—Fourth Edition—2, Par. 12776, wherein it is stated: "A Union charged each of four brewing companies with unlawful refusal to bargain. * * * Union also alleged that by seeking and obtaining an order from a State court restraining the employees in engaging in striking and picketing, Company number one (plaintiff in the instant case) violated Section 8(a)(1) of the [National Labor Management Relations] Act. * * * N. L. R. B. General Counsel sustained the Regional Director's refusal to issue a complaint."

It is not at all clear from defendants' briefs, nor from their motion for rehearing, just what section of what Act of Congress they are in fact relying on. If defendants' reliance be upon Section 8(b)(4)(d) of the Taft-Hartley Act it is obvious that the N. L. R. B. ruled that the instant [fol. 131] facts were not of such character that Section 8(b)(4)(d) of that Act has any application thereto. Both the N. L. R. B. and its General Counsel, in his ruling, concluded that the N. L. R. B. had no jurisdiction whatever because neither a labor dispute nor an unfair labor practice was involved, and that there was no situation presented by the instant facts to which the Taft-Hartley Act applied.

The other points attempted to be asserted in appellants'

motion for rehearing are but a re-argument of the issues and matters ruled and determined in our opinion heretofore filed.

The motion for rehearing, or in the alternative to transfer the case to the Court En Banc, is accordingly overruled.

[File endorsement omitted.]

[fol. 132] In the Supreme Court of Missouri Division Number One, January Session, 1954

No. 43522

[Title omitted]

Motion to Stay Mandate—March 12th, 1954

Come now the appellants above and state to this Court that they propose and intend to apply to the Supreme Court of the United States for the issuance of its Writ of Certiorari to review the opinion and decision of this Court rendered February 8, 1954, and to this end have presently begun to institute the necessary steps for the above purpose.

Wherefore, appellants respectfully pray this Court for its order staying the issuance of its Mandate until such time as the Supreme Court of the United States has acted and passed upon the said petition for the issuance of its Writ of Certiorari.

Respectfully submitted, Roessel, Boxdorfer & Brownell, By Robert A. Roessel, Counsel for Appellants.

[fol. 132a] Certification of Service by Mail of the Motion to Stay the Issuance of the Mandate—Dated March 10th, 1954, omitted in printing.

[fol. 133] IN THE SUPREME COURT OF THE STATE OF MISSOURI

No. 43,522

[Title omitted]

ORDER STAYING THE ISSUANCE OF THE MANDATE—March 12th, 1954

Now at this day, the Court having seen and fully considered the motion of the appellants, this date filed herein, to stay the mandate in the above entitled cause, doth order that said motion be, and the same is hereby sustained.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 134] IN THE SUPREME COURT OF MISSOURI, DIVISION NUMBER ONE, JANUARY SESSION, 1954

No. 43522

[Title omitted]

PRAECIPE FOR PREPARATION OF TRANSCRIPT OF RECORD IN RE APPLICATION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES—Filed March 12th, 1954

To The Clerk of the Supreme Court of Missouri:

Appellants above propose and intend to file a petition with the Supreme Court of the United States for a Writ of Certiorari addressed to the Supreme Court of Missouri, in the above matter.

You are hereby requested to prepare transcript of the record in the above case as the same appears in the records of your office; said transcript to include the following:

1. Authenticated copy of the printed transcript of the record.

2. Copy of the Decision of the Court rendered February 8, 1954.

3. Copy of the Motion for Rehearing filed February 20, 1954.

4. Copy of the Per Curiam Opinion and Ruling of the

Court on appellants' Motion for Rehearing, filed March 8, 1954.

5. Copy of Motion to stay Mandate, filed March 12, 1954
6. Copy of Order of the Court staying the Mandate.

Roessel, Boxdorfer & Brownell, By Robert A. Roessel, Counsel for Appellants.

[File endorsement omitted.]

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 97

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, et al., Petitioners,

vs.

ANHEUSER-BUSCH, INC.

ORDER ALLOWING CERTIORARI—Filed October 14, 1954

The petition herein for a writ of certiorari to the Supreme Court of the State of Missouri is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.